TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, [redacted] 1912.

No. [redacted] 40.

LOUISIANA NAVIGATION COMPANY, LIMITED, PLAINTIFF IN ERROR,

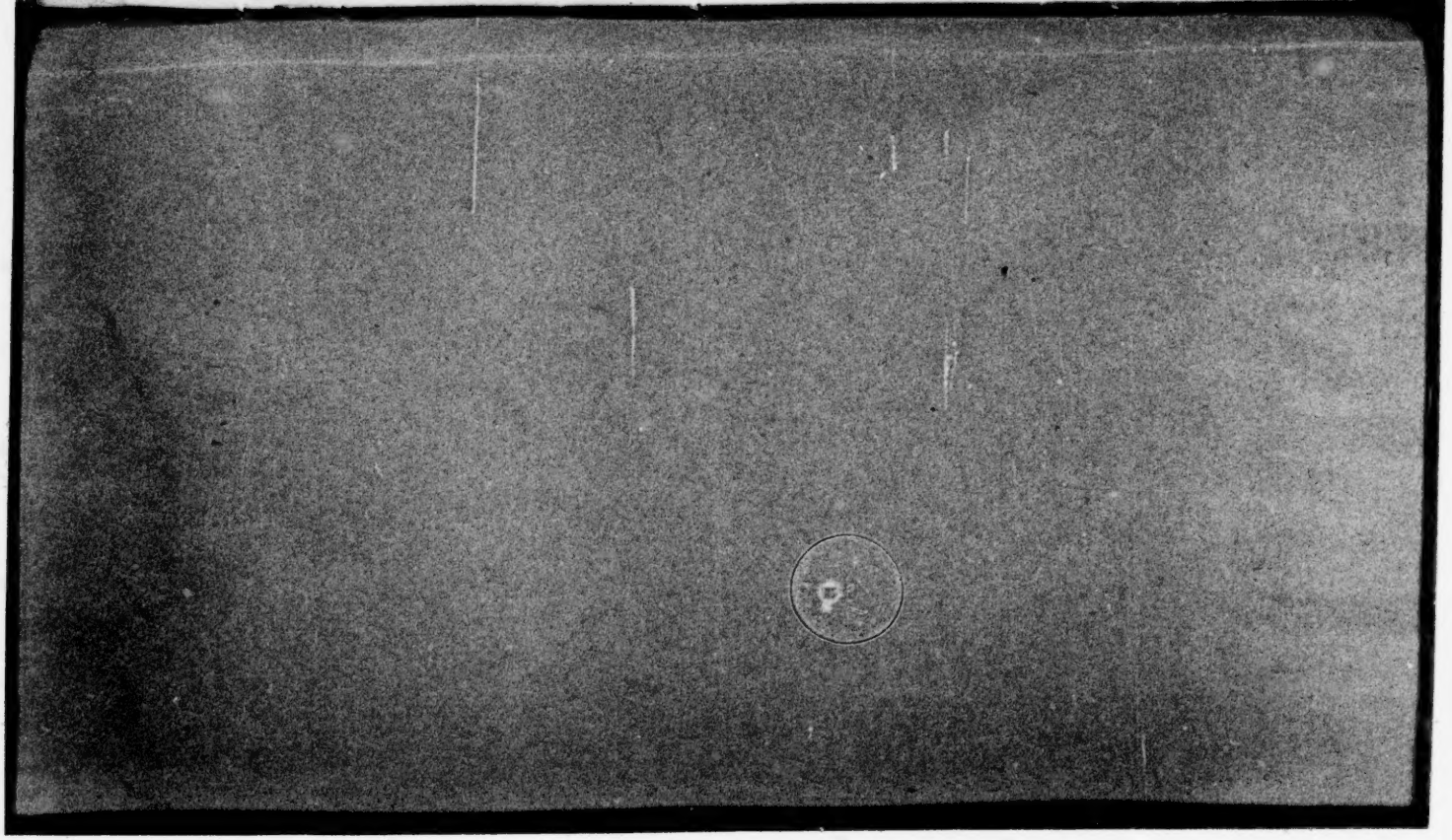
vs.

OYSTER COMMISSION OF LOUISIANA, E. C. JOULLIAN CANNING COMPANY, AND DUNBARS, LOPEZ, AND DUKATE COMPANY.

IN ERROR TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

FILED APRIL 23, 1910.

(22,123)



(22,123)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1911.

No. 261.

LOUISIANA NAVIGATION COMPANY, LIMITED, PLAINTIFF IN ERROR,

vs.

OYSTER COMMISSION OF LOUISIANA, E. C. JOULLIAN CANNING COMPANY, AND DUNBARS, LOPEZ AND DUKATE COMPANY.

IN ERROR TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

INDEX.

	Original.	Print
Proceedings had in civil district court	1	1
Petition	1	1
Order for injunction	9	6
Affidavit for injunction	9	6
Bond for injunction	10	6
Writ of injunction and sheriff's return thereon	11	7
Writ of injunction and sheriff's return thereon	12	8
Exception of Dunbars, Lopez & Dukate	13	9
Exception of Joullian Canning Company	14	10
Exception of Oyster Commission of Louisiana	14	10
Rule to dissolve injunction and order	16	12
Sheriff's return on rule to dissolve	19	14
Rule to dissolve or modify injunction	20	14
Rule of Dunbars, Lopez & Dukate Company to dissolve or modify injunction	20	14

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JANUARY 15, 1912.

	Original	Print
Rule of the E. C. Joullian Canning Company to dissolve or modify injunction	25	17
Sheriff's return on motion to dissolve	30	21
Sheriff's return on rule to dissolve	30	21
Motion to fix exception	30	21
Motion for order to have rule to dissolve stand as answer of defendant	31	22
Motion to dissolve injunction overruled (extracts from the minutes of Division E, civil district court)	32	22
Order compelling plaintiff to furnish additional injunction bond (extract from the minutes of Division "E," civil district court)	32	23
Testimony and notes of evidence taken in civil district court	33	23
Testimony of J. B. Danenhauer, Jr.	33	23
Geo. H. Dunbars	39	28
Frank T. Payne	43	31
J. B. Danenhauer, Jr. (recalled)	43	31
E. C. Joullian	45	32
Exhibits, four in number, offered in evidence by counsel for plaintiff	48	34
Certificate of Walter L. Cohen, register, and A. B. Kennedy, receiver of the United States land office	48	34
Certificate of Walter L. Cohen, register, and A. B. Kennedy, receiver of the United States land office	48	35
Certificate of Walter L. Cohen, register, and A. B. Kennedy, receiver of the United States land office	49	35
Certificate of Walter L. Cohen, register, and A. B. Kennedy, receiver of the United States land office	49	35
Order annulling and setting aside order of February 15, 1910, ordering plaintiff to furnish additional injunction bond (extract from the minutes of Division "E," civil district court, Wednesday, February 17, 1909)	50	35
Exceptions maintained in so far as to order the plaintiff to amend his petition (extract from the minutes of the civil district court, Division "E," Thursday February 18)	50	36
Motion for additional delay	51	36
Supplemental and amended petition and order and four exhibits	51	37
Exception of Oyster Commission of Louisiana	53	38
Exception of Joullian Canning Company	54	39
Exception of Dunbars, Lopez & Dukate Company	54	39
Judgment	55	40
Note of evidence	56	40
Agreement of counsel as to patents	56	40
Motion for new trial	57	41
Motion for new trial overruled and judgment signed (extract from the minutes of Division "E," civil district court, Friday, March 19, 1909)	58	41
Act of transfer	58	41
Motion of appeal	61	43
Appeal bond	62	44
Certificate of clerk of civil district court	63	45

	Original	Print
Proceedings had in supreme court of the State of Louisiana	64	45
Transcript of appeal filed	64	45
Motion and order to use original documents	64	46
Order to use original documents (extract from minutes)	65	46
Motion to advance cause	66	47
Motion and order to advance (extract from minutes)	67	48
Motion and order to advance	67	48
Motion and order to advance (extract from minutes)	69	50
Called and motion and order to continue preference (extract from minutes)	69	50
Called and appearance, argued and submitted (extract from minutes)	70	50
Final judgment (extract from minutes)	71	51
Opinion of supreme court	72	51
Dissenting opinion, Provosty, judge of supreme court	88	61
Petition for rehearing	89	61
Rehearing refused (extract from minutes)	97	66
Petition for writ of error from the Supreme Court of the United States	98	66
Order granting writ of error	101	69
Assignment of errors	101	69
Original writ of error	111	75
Copy of writ of error	113	76
Bond for writ of error	115	78
Citation and sheriff's return thereon to the E. C. Joullian Canning Company	117	79
Citation and sheriff's return thereon to the Dunbars, Lopez & Dukate Company	118	80
Citation and sheriff's return thereon to the Oyster Commission of Louisiana	119	81
Patent 194 (original document)	120	82
Patent 195 (original document)	121	83
Patent 196 (original document)	122	84
Patent 4955 (original document)	123	85
Patent 706 (original document)	124	85
Patent 1038 (original document)	125	87
Patent 1039 (original document)	126	88
Patent 5093 (original document)	127	89
Patent 961 (original document)	128	90
Patent 1040 (original document)	129	92
Patent 761 (original document)	130	93
Patent 870 (original document)	131	95
Copy of linen tracing introduced in proceedings had in civil district court and carried to the supreme court in original, as per agreement of counsel, page 56	132	95
Copy of linen tracing introduced in proceedings had in civil district court and carried to the supreme court in original, as per agreement of counsel, page 56	133	95
Copy of linen tracing introduced in proceedings had in civil district court and carried to the supreme court in original, as per agreement of counsel, page 56	134	95

	Original	Print
Copy of linen tracing introduced in proceedings had in civil district court and carried to the supreme court in original, as per agreement of counsel, page 56	135	95
Copy of Coast and Geodetic Survey chart No. 190, introduced in civil district court and brought to the supreme court in original	136	95
Map of township 10, showing position of Thalweg and Creole gap, etc., with explanatory statement attached, offered by counsel for plaintiff in supreme court	137	95
Agreement of counsel as to transcript No. 11, original, October term, 1905, in case State of Louisiana *vs.* State of Mississippi, lodged in Supreme Court of the United States	138	97
Certificate of the clerk of the supreme court of the State of Louisiana	139	98
Certificate of the chief justice of the supreme court of the State of Louisiana	140	99

1 STATE OF LOUISIANA,
Parish of Orleans, City of Orleans:

Civil District Court for the Parish of Orleans.

Petition, Affidavit, Order and Bond.

Filed December 19th, 1908.

Civil District Court, Div. "E."

No. 88185.

LOUISIANA NAVIGATION COMPANY, LIMITED,
versus
OYSTER COMMISSION OF LOUISIANA and E. C. JOULLIAN CANNING COMPANY et al.

To the Honorable the Civil District Court for the Parish of Orleans:

The petition of the Louisiana Navigation Company Limited, a corporation organized and existing under the laws of the State of Louisiana and domiciled in the City of New Orleans, herein appearing and acting and represented by William V. Gilmore, its President, respectfully represents:

2 That petitioner the Louisiana Navigation Company Limited, is the owner and in possession of certain lands, in the Parish of St. Bernard of this State, on the Coast Line, bounded on the North by the waters described as Mississippi Sound or Grand Pass of the Gulf of Mexico, all acquired by petitioner by mesne conveyance from the State of Louisiana, that the said lands are submerged & swamp & overflowed lands and embrace the places known as "Creole Gap", in Section Thirty-two Township ten South Range Twenty East and Sections Four and Five in Township Eleven South Range Twenty East of the official plat of survey of the said lands in the United States and State land Offices, and other water bottoms in the limits of petitioner's survey, extending across at the extreme Western end of petitioner's land to the Western Section lines of Sections 6 and 7 embracing the place or small pass known as "Grand Pass", in the said Section- Six and Seven in Township Eleven South Range Twenty East, as distinguished from "Grand Pass of the Gulf of Mexico", aforesaid; the said lands extending southerly or Southwesterly to a place designated as "Drum Pass" and composing about Six Thousand Eight Hundred and Nine Acres. That the said lands of petitioner were donated by Congress to the State and surveyed and approved and selected by the State of Louisiana and transferred by the United States and accepted and sold by the State of Louisiana to the authors of petitioner's title as swamp and overflowed lands.

That the said property, after petitioner's ownership began was

claimed by the State of Mississippi and was overrun periodically by parties in boats from that shore, eleven miles distant till the water boundary between the two States was established by the Supreme Court of the United States in the decision of the State of Louisiana vs. State of Mississippi, reported in Vol. 202, United States reports at pages 1-58.

That the said land is inaccessible, except by water from the opposite Mississippi or Louisiana shores, and after the said decision, parties from Mississippi, locating in Louisiana, are attempting to continue the State of affairs which existed on said coast, and the
3 property is subject to illegal encroachment notwithstanding the said decision of the Supreme Court of the United States, and the said parties have located and operated boats and canning factories on the Louisiana shore, and threaten to annul and deprive petitioner of the enjoyment of its rights of property and privileges in connection with the ownership of said lands, and that petitioner has not received the protection of the law to which it is entitled in the possession and enjoyment of its said property and the development of its business and ownership for which the said corporation limited was organized.

That petitioner has been at great expense in the purchase of boats and machinery and employment of service and labor, and has operated a steamboat, known as the "Carrie", enrolled and licensed for the Coasting Trade and authorized to pursue the busines- of commerce and navigation between the several States of the Union and Louisiana and Mississippi, in connection with the said land and petitioner's ownership and development of the said property.

Petitioner shows that, notwithstanding its open and peaceable possession of said land and its title thereto of record, certain parties, to-wit: "The Oyster Commission of Louisiana" created under Act 52 of 1904, dimiciled in the City of New Orleans; and E. C. Joullian Canning Company; and Dunbars and Lopez and Dukate Company, corporations organized under the laws of Louisiana, domiciled in the City of New Orleans, licensees of the said Oyster Commission of Louisiana; and other parties unknown to petitioner, have undertaken to slander petitioner's title to said land and have entered into a combination to take physical possession of petitioner's said land.

That boats owned or operated by defendant, Dunbars and Lopez and Dukate Company, or Lopez and Dukate Incorporated and G. W. Dunbars Sons Incorporated, to whom said Dunbars and Lopez and Dukate Company, defendant have succeeded, and others whose names to petitioner are unknown, worked on shares or otherwise, or in which the said parties were interested, have taken away petitioner's property from said land knowing the same to be peti-
4 tioner's land and tugs belonging to the said parties with barges at anchor in deep water outside petitioner's property have illegally been loaded with oysters from petitioner's land by said boats, and said parties defendant owe petitioner an account, and the oyster commission of Louisiana which collected taxes on the same owe petitioner an account for the property so taken, which has been packed or shipped or manufactured into by products, a large part or

residue of which in shells, remains in possession of said parties piled around the plants of said parties in Mississippi and at Pearl River and Rigolets in Louisiana. That the said Lopez and Dukate Incorporated applied for a lease of petitioner's property from the Oyster Commission of Louisiana which was rejected.

That the said defendant Oyster Commission of Louisiana its agents or employees, by threats of arrest, imprisonment and criminal prosecution and by force of arms under color of Act 52 of 1904, and Act 178 of 1906, amendatory thereof, attempt to intimidate and prevent petitioner from pursuing the business for which it was organized and the development of its property. That petitioner's ownership of said property is well and notoriously known and undisputed and that petitioner had placed signs on its said property to further notify the said oyster Commission of Louisiana and all other parties that the property aforesaid is the private property of petitioner. That the said defendant Oyster Commission, its President agent or employees, on or about the 27th day of November 1908, notwithstanding that petitioner had repeatedly notified the said Oyster Commission of its exclusive ownership and possession of said property, entered upon said property of petitioner and trespassed vi et armis on petitioner's property and cut down and destroyed or carried off the signs placed by petitioner on said lands, and ordered its licensee, the E. C. Joullian Canning Company, and other parties to continue fishing and carry off petitioner's property, and the said E. C. Joullian Canning Company and its President ordered its employees and boats to continue their joint trespass on petitioner's property.

5 That the said illegal and malicious acts of the said Oyster Commission of Louisiana and the said E. C. Joullian Canning Company constitute a joint trespass in law for which the said defendants are liable as co-trespassers in solido to petitioner.

Petitioner shows that the acts of the said defendants will prevent the peaceable occupation of petitioner's land and the carrying on of the business of the plaintiff and its employees in the face of threats or charges of alleged violation of the provisions of the said Act 52 of 1904, and Act of 1906, amendatory thereof. That plaintiff has paid all taxes and assessments on said lands, including Levee taxes, and the said lands and the Company's business are not subject to the license taxes, restrictions, penalties, prohibitions, forfeitures, etc., of the said Act.

Petitioners show that its lands are valuable for reclamation or for fisheries and the ownership and the use of the same to petitioner is worth more than the sum of Twenty-five thousand dollars.

Petitioner further shows that the Oyster Commission of Louisiana and the E. C. Joullian Canning Company by their said acts of trespass have damaged petitioner in the sum of Five Thousand dollars actual damages for property taken at trespass of said date Nov. 27, 1908, interruption and suspension of its business, expense involved in having to resort to legal proceedings to retain possession of its own property in costs of counsel fees, survey, etc., and in the further sum of One Thousand Dollars for exemplary damages for the said reckless trespass on petitioner's property.

Petitioner shows that it has suffered serious injury and loss of property from the illegal acts aforesaid in defiance of petitioner's title and in the oysters thereupon taken from and carried off petitioner's land by the said parties and the said Oyster Commission of Louisiana and its said licensees will continue taking petitioner's property and the said illegal acts will be repeated and a condition of disorder and dismay will be induced and prevail on petitioner's property as a result of the said illegal acts and petitioner will suffer a denial of justice and enjoyment of all property rights and lose the control and ownership of said property and will suffer irreparable injury, unless the said Oyster Commission of Louisiana and its said licen-ees are restrained by this Honorable Court through its process of injunction, and petitioner shows that a writ of injunction is necessary to protect the rights and property of petitioner in the premises.

6

Petitioner shows that the provisions and sections of the said acts 52 of 1904, and amendatory Act 198, p. 323 of 1908, in no way conflict with petitioner's rights but that the said parties pretend to act under cover of the said provisions. That the said provisions relate to public oyster fishing. That private ownership and titles are excepted from the operation of the said sections and Section 10 Act 198 of 1906, p. 323 forbid the Oyster Commission of Louisiana from leasing or encroaching on private property claimed by private titles; but, should there be drawn in question any conflict with the provisions of said acts in connection with petitioner's title and full enjoyment of its property, petitioner shows the said acts and various Sections imposing conditions, of pursuing its rights, continuing ownership of the said property, upon it, subject it to arrest, fines and forfeiture of its said property and rights and personal liberty and safety of its employees and that the said acts and sections thereof are illegal, unconstitutional, null and void, in violation of Art. 1, Sec. 10 Constitution of the United States.

That petitioner has been in possession as owner and by title for more than thirty years through the authors of its title and for more than ten years by just title, and petitioner invokes and pleads the prescription of ten and thirty years in aid of petitioner's said possession and ownership.

7

That petitioner through the authors of its title, has been in possession by title as owner for more than thirty years and for more than ten years by just title; and, if there is any conflict with the provisions of said Act 52 of 1904 and amendatory act 178 of 1906, the title of petitioner is not affected by the same as the said Acts, which have repealed all prior laws, divest vested rights and impair the obligation of a contract in violation of Article 1 Section 10, of the Constitution of the United States and are unconstitutional, null and void. That the repeal of a repealing law does not revive the first law and the said acts repeal all prior laws on the same subject matter.

That the said acts embrace more than one object in their titles, viz. the creation of an Oyster Commission and defining its powers and privileges, etc., contrary to Article 31 of the State Constitution. That Section 1 and other provisions of the said act 52 of 1904 are

in violation and defeat the conditions on which the public lands were donated by Congress to the State for sale to individuals for the use of the proceeds for drainage and reclamation of the said lands and stop the sale of the said lands and divert them from the purposes for which they were intended and violate the provisions of the said Constitution guaranteeing the State a Republican form of Government, and equal protection of the law.

That the lease system introduced by the provisions sections 10-18 and other parts of said acts is illegal and not practicable and unconstitutional in violation of Articles 58 & 195 of the constitution prohibiting the granting, etc., by the State of public property.

That other Sections of said acts, if enforced against petitioner, such as prohibiting dredging of oysters on its own lands, shipping the same out of the State in the shell, etc. and employing the said steamboat for said purposes impose a tonnage tax in violation of Art. 1, Sec. 10 par. 3 U. S. Constitution, violate the laws of Congress on Commerce between the States and the provisions of interstate and foreign commerce which Congress has the right to regulate
8 Art. 1 Sec. 8 par. 3 U. S. Constitution and the Fourteenth Amendment and other provisions of law and of the Constitution of the United States.

Wherefore, the premises considered, petitioner prays that the Oyster Commission of Louisiana, and E. C. Joullian Canning Company and Dunbars and Lopez and Dukate Company through their respective proper officers, be cited to appear and answer this petition.

Petitioner further prays that, the annexed affidavit and bond considered, a preliminary injunction issue enjoining and restraining the Oyster Commission of Louisiana and the E. C. Joullian Canning Company and Dunbars and Lopez and Dukate Company, their agents and employees, and all other parties who may be discovered slandering petitioner's possession and title or trespassing on petitioner's property and the said places known as "Creole Gap" and "Grand Pass" aforesaid and from interfering with the full enjoyment of the said property by your petitioner and employment of the said Steamboat "Carrie," her officers and crew and petitioner's employees, and from attempting to lease, grant, or license to others for fisheries or other purposes the said places or property situated within petitioner's survey as described in petitioner's title. That the said parties defendant may be ordered to account to petitioner for the oysters in the shell taken away by them, or parties with whom they were concerned, from said property, and that petitioner have judgment for the amount shown to be due petitioner by said account.

Petitioner further prays that there be judgment in favor of petitioner, the Louisiana Navigation Company, Limited, and against the said defendant, the Oyster Commission of Louisiana and the E. C. Joullian Canning Company in solido for damages actual and exemplary for said joint trespass of the said parties in the sum of Six Thousand Dollars as above set forth, and maintaining and making perpetual the preliminary injunction against said defendants and all others found questioning, impeaching and slandering the
9 petitioner's possession and title or trespassing upon petitioner's said property as described by petitioner's title and patents

and the government surveys and against all parties in solido, for costs and general relief.

(Signed) J. C. & THOMAS GILMORE & EDWARD N. PUGH,
Att'ys for Petitioner.

Order.

Let a writ of injunction issue as herein prayed for and according to law, on petitioner furnishing bond in the sum of Twenty-five Hundred Dollars.

New Orleans December 18th, 1908.

(Signed) JOHN ST. PAUL, *Judge.*

Civil District Court, Division "C."

No. —.

LOUISIANA NAVIGATION COMPANY, LIMITED,
versus
LOUISIANA OYSTER COMMISSION et als.

Affidavit for Injunction.

STATE OF LOUISIANA,
Parish of Orleans, ss:

Personally appeared before me, the undersigned authority William V. Gilmore, who deposes and says; that he is the President of the Louisiana Navigation Company, Limited, that he has read the foregoing petition and all the allegations thereof in so far as they are to petitioner's knowledge, are true and in so far as the said facts are not to petitioner's knowledge he believes them to be true; that a writ of injunction is necessary to protect petitioner's rights and prevent defendant from disturbing the plaintiff in the actual and real possession which plaintiff has had for more than one year of the real estate and real rights described in the petition and of which it claims the ownership, possession and enjoyment and to preserve the property in dispute during the pendency of this action, and prevent the parties defendant or others during the continuance of this suit from dilapidating the same or doing some other act injurious to the plaintiff or the said property.

Sworn to and subscribed before me, this 18th day of December A. D. 1908.

[SEAL.] (Signed) WILLIAM V. GILMORE.

(Signed) J. McCORMICK, *D'y Clerk.*

Know all men by these presents, That we the Louisiana Navigation Company, Limited, as principal, and William V. & Thom. Gilmore as surety, of the City of New Orleans, and State of Louisiana are held and firmly bound in solido unto the Oyster Commission of Louisiana and the E. C. Joullian Canning Company and Dunbars and Lopez

and Dukate Company, in the sum of Twenty-five Hundred Dollars ($2,500) lawful money of the United States of America, to be paid to said Defendants, heirs, executors, administrators and assigns for which payments well and truly to be made, we bind ourselves, and each of us by himself and each of our heirs, executors, administrators, firmly by these presents.

Sealed with our seal and dated the 18th day of December in the year of our Lord 1908.

Whereas the said Louisiana Navigation Company, Limited, has this day presented a petition to the Honorable the Civil District Court for the Parish of Orleans, praying for a Writ of Injunction.

Now the condition of the above obligation is, That we, the above bound Louisiana Navigation Company, Limited, and William V. Gilmore & Thomas Gilmore will well and truly pay to the said Oyster Commission of Louisiana and E. C. Joullian Canning Company, and Dunbars and Lopez and Dukate Company the defendants in said suit all such damages as they may recover against us, in case it should be decided that the injunction was wrongfully obtained.

11 Signed, sealed delivered in presence of

LOUISIANA NAVIGATION COMPANY, LIMITED,

(Sig.) By W. V. GILMORE, *President.* [SEAL.]

(Sig.) WILLIAM V. GILMORE. [SEAL.]

(Sig.) THOMAS GILMORE.

Writ of Injunction, Sheriff's Return Thereon.

Filed December 19th, 1908.

STATE OF LOUISIANA:

Civil District Court for the Parish of Orleans.

No. 88185.

LOUISIANA NAVIGATION CO., LTD.,
versus
OYSTER COMMISSION OF LA. et als.

The State of Louisiana to the Oyster Commission of Louisiana, New Orleans, Greeting:

You, Your agents and Employees are hereby commanded enjoined and Restrained in the name of the State of Louisiana and of the Civil District Court for the Parish of Orleans, from slandering petitioner's property and title or trespassing on petitioner's property and the said places known as "Creole Gap" and "Grand Pass" aforesaid and from interfering with the full enjoyment of the said property by your petitioner and employment of the said Steamboat "Carrie," her officers and crew and petitioner's employees, and from attempting to lease, grant, or license to others for fisheries or other purposes

the said places or property situated within petitioner's survey as described in petitioner's title.

And you so to remain enjoined and restrained until the further orders of this Court.

Witness the Honoraple T. C. W. Ellis, Fred D. King, Geo. H. Theard, John St. Paul, and W. B. Sommerville, Judges of our
12 Court, this 19th day of December in the year of our Lord one thousand nine hundred and eight and in the one hundred and 33rd year of the Independence of the United States.

[SEAL.] (Signed) J. McCORMICK,
D'y Clerk.

Received Saturday December 19th, 1908, and on the 21st day of December 1908, I served a copy of the within Writ of Injunction on the Oyster Commission of Louisiana, defendant herein by leaving the same at their office No. 609 and 611 Maison Blanche Building in the hands of Jos. Hyams, its Secretary, The President and other Superior Officers being absent from their Office at time of said service.

Returned same day.
Sheriff's Fees $2.00.
(Signed) JOHN C. VILLE,
Deputy Sheriff.

Writ of Injunction and Sheriff's Return Thereon.

Filed December 29th, 1908.

STATE OF LOUISIANA:

Civil District Court for the Parish of Orleans.

No. 88185.

LOUISIANA NAVIGATION CO., LTD.,
versus
OYSTER COMMISSION OF LA. et als.

The State of Louisiana to E. C. Joullian Canning Company, and Dunbars and Lopez and Dukate Company, New Orleans, Greeting:

You, your agents and employees are hereby commanded enjoined and restrained in the name of the State of Louisiana and of the Civil District Court for the Parish of Orleans, from slandering petitioner's possession and title or trespassing on petitioner's property and
13 the said places known as "Creole Gap" and "Grand Pass" aforesaid and from interfering with the full enjoyment of the said property by your petitioner and employment of the said Steamboat "Carrie" her officers and crew and petitioner's employees and from attempting to lease, grant or license to others for fisheries or other purposes the said *places* of property situated within petitioner's survey as described in Petitioner's title.

And you are so to remain enjoined and restrained until the further order of this Court.

Witness the Honorables, T. C. W. Ellis, Fred D. King, Geo. H. Theard, John St. Paul, and W. B. Sommerville, Judges of our said Court this 21st day of December in the year of our Lord one thousand nine hundred and Eight and in the One Hundred and 33rd year of the Independence of the United States.

[SEAL.] (Signed) J. McCORMICK,
D'y Clerk.

Received Monday December 21st, 1908, and on the 22nd day of December 1908, I served a copy of the within Writ of Injunction on E. C. Joullian Canning Company Defendant herein by personal service on John Dymond Jr., their Attorney, who accepts service of same.

Returned same day.

Sheriff's Fees $2.00.

(Sig.) E. E. WALLOT,
D'y Sheriff.

Exception of Dunbars, Lopez and Dukate.

Filed January 4th, 1909.

Civil District Court, Div. "C."

No. 88185.

LOUISIANA NAVIGATION CO., LTD.,
vs.
OYSTER COMMISSION OF LA. et als.

And now into Court through undersigned counsel, comes Dunbar Lopez and Dukate Co., named defendants herein, for the purpose of excepting to plaintiff's petition and for cause of exception says:

First. That plaintiff's petition discloses no cause of action.

14 Second. That plaintiff's petition is too vague and indefinite to be safely answered unto.

Wherefore the premises considered defendant prays that these exceptions be maintained and that it be hence discharged at plaintiff's costs.

(Signed) JOHN DYMOND, JR.,
Att'y for Defendant.

Exception of Joullian Canning Company.

Filed January 4th, 1908.

Civil District Court, Division "C."

No. 88185.

LOUISIANA NAVIGATION CO., LTD.,
vs.
OYSTER COMMISSION OF LA. et als.

And now into Court through undersigned counsel, comes E. C. Joullian Canning Company, named defendant herein, for the purpose of excepting to plaintiff's petition and for cause of exception says:

First. That plaintiff's petition discloses no cause of action.

Second. That plaintiff's petition is too vague and indefinite to be safely answered unto.

Wherefore the premises considered defendant prays that these exceptions be maintained and that it be hence dismissed at plaintiff's costs.

(Signed) JOHN DYMOND, Jr.,
Att'y for Defendant.

Exception of Oyster Commission of La.

Filed January 5th, 1909.

Civil District Court, Division "C."

No. 88185.

LOUISIANA NAVIGATION CO., LTD.,
vs.
OYSTER COMMISSION OF LA. et als.

Comes the Oyster Commission of Louisiana, one of the de-
15 fendants in the above numbered and entitled cause, before answer, and reserving the right to file other and further exceptions and to answer hereto, should these exceptions be overruled, and excepts to the petition herein filed against it, for this, to-wit:

It shows that this Honorable Court is without power, right or jurisdiction to entertain, hear, try, or determine this action, for the reason that, so far as this appearer is concerned, it is an attempt on the part of the plaintiff to stop and prevent, by the civil process of injunction, the execution and enforcement of the criminal laws of the State of Louisiana, which it is the duty of this appearer under the law to enforce.

It shows that said petition shows and displays no cause of action against appearer for the reason that the acts alleged therein to have been done and performed by appearer and its officers and employees do not constitute a slander of any title which plaintiff may have, or claim to have, to any land.

It shows that said petition displays and shows no cause of action, in that said petition prays for damages, actual and punitory against appearer, which is a Department of the Government of the State of Louisiana, so declared by the act of the Legislature of Louisiana, creating it, and a suit for damages against it is, in effect, a suit for damages against said State of Louisiana, which action can not be brought except in pursuance of a permissory act of the Legislature of said State permitting same, which act has never been adopted or passed by said Legislature; that said action is an attempt to subject the revenues collected by appearer to a claim for damages, and to divert said revenues collected by appearer are revenues of the State of Louisiana, and are directed by law to be paid, as collected, into the treasury of the said State, as a part of the revenues and alimony of said State, and cannot be diverted therefrom by the judgment of any Court.

It shows that said petition is vague and indefinite, and that appearer can not, and should not, be held to answer same, for this, that said petition does not describe any lands, or give the metes
16 and bounds, or any other description thereof, alleged to belong to plaintiff, the title whereto it claims this appearer has slandered; that plaintiff does not, in said petition allege, or give, or refer to any title to said lands, nor allege when, or from whom, it obtained title, nor where same is recorded, nor where same, nor any copy thereof, can be found.

It shows that the petition herein filed, as served upon appearer, is a meaningless jumble of words, conveying clearly no idea of any kind, nor setting forth what lands petitioner claims to own, nor any title plaintiff claims to have, nor in what manner, nor by what means, nor when, nor where, nor to whom, nor how, this appearer has slandered any alleged title, or pretended title, plaintiff claims to hold to any lands whatever.

Wherefore appearer prays that these exceptions be maintained and this cause be dismissed, and it be discharged hence without day.

(Signed) JOHN C. WICKLIFFE,
Attorney Oyster Comm. of La.

Rule to Dissolve Injunction & Order.

Filed January 13th, 1909.

Civil District Court, Div. "C."

No. 88185.

LOUISIANA NAVIGATION CO., LTD,
VS.
OYSTER COMMISSION OF LA. et al.

Comes the Oyster Commission of Louisiana, one of the defendants in the above numbered and entitled cause, and shows to the Court that the order entered for the issuance of the injunction herein was improvidently granted.

It shows that the amount of bond fixed by said order, and which was given by plaintiff is totally inadequate to secure the damages which will accrue to appearer or appearer's co-defendants herein.

17 It shows that it derives the following revenues from the oyster business and industry in the territory covered by plaintiff's injunction and the canning and shucking establishments which obtain their oysters from said territory, viz: privilege tax upon oysters *$8681000;* canners' licenses, $300.00; Shop licenses, $85.00; Scrapers' licenses, $675.00; vessel Licenses, $825.00; making a total of Ten Thousand Five Hundred and Sixty seven Dollars, all of which is collected during each oyster season, which begins about October 15, and ends about April 15 each year.

It shows that the effect of the injunction herein issued has been to practically paralyze the oyster industry in the said territory, and to prevent appearer from collecting the revenues set out above.

It shows that, before this case can be finally heard and determined, the oyster season will be over and the above amount of revenue will be entirely lost to this appearer, and that it will be damaged thereby in that amount.

It shows that said injunction prevents this appearer from collecting the tax of three cents per barrel imposed by law upon all oysters fished in Louisiana waters, whether fished from natural reefs, or from private bedding grounds or privately owned properties (if there be such, which the appearer denies).

It shows that said injunction prevents appearer from enforcing the criminal laws of the State of Louisiana, in reference to the oyster waters and industry, and from causing the arrest, prosecution, conviction, and punishment of those who may break said laws in the territory covered by the injunction herein issued (which it is its duty to do) if said persons should happen to be in the employ of plaintiff, or if the vessels breaking such laws should be owned, chartered or operated by said plaintiff or anybody in its employ.

It shows that said writ of injunction is an attempt to prevent the

enforcement of the criminal statutes of the State of Louisiana by the Department of the State Government upon which, by law,
18 devolves the enforcement of said statutes, by means of an injunction from a court of purely civil jurisdiction.

It shows that the allegations of the petition and the terms of the injunction herein issued are too vague and indefinite as to the property with which appearer is enjoined from interfering to enable appearer, its agents, officers and employés to know what land is meant, or with what property they are enjoined from interfering, or granting leases on. It shows that the places known as "Creole Gap" and "Grand Pass," the only places mentioned in the writ of injunction served upon it, are bodies of water and not land, being a part of the Gulf of Mexico, connecting said Gulf with the body of water known as Mississippi Sound, both of which bodies of water are a part of the high seas and are not subject to private ownership and which to said named passes or gaps are navigable channels connecting said Gulf and Sound and are susceptible of private ownership.

It shows that the waters of Creole Gap and Grand Pass contain natural oyster reefs, where oysters grow naturally, and that same are and have been for many years, reserved, by law for public use, and are reserved from private ownership, and that appearer is charged with the custody and management of same by the laws of Louisiana.

It shows that none of the titles of petitioner cover anything except land, same being for certain fractional sections of land, and that the surveys and maps thereof, made by the United States Government, were adopted by the State of Louisiana, and that all titles by the State of Louisiana to all lands in the region are made according to such surveys and maps, and only to lands, specially exempting and reserving from said title all waters, as shown by the area of the lands set forth in said titles and by the maps and showing the water-line. That plaintiff has, therefore, no right to an injunction prohibiting appearer from in any manner managing and controlling the waters of the said territory and the oyster reefs and bottom under said
19 waters, same not being covered by any title held by plaintiff.

Wherefore appearer prays that this court issue a rule to the said Louisiana Navigation Company, Limited, directed, commanding it to appear in this court on Friday, January 22, 1909, at eleven o'Clock A. M. and shows cause why said injunction herein issued should not be dissolved and set aside and in the alternative, why said plaintiff should not be required to furnish bond herein in favor of this appearer in the sum of Fifteen Thousand, Eight Hundred and Fifty one Dollars ($15,851.00), and failing to furnish said bond that said injunction be dissolved and set aside.

Appearer further prays that upon the trial hereof this rule be made absolute and said injunction be dissolved and set aside, and, in the alternative, and only in the event that the foregoing prayer be refused and denied, that plaintiff be required to furnish bond in the amount and as set out above, and failing to furnish same that the injunction herein issued by dissolved and set aside.

(Signed) JOHN C. WICKLIFFE,
Att'y for Oyster Comm. of La.

Order.

Let the rule issue as prayed for above, returnable on Friday, January 22, 1909, at eleven o'clock A. M. directing the Louisiana Navigation Company, Limited, to show cause why the injunction herein issued should not be dissolved and set aside, or, in the alternative why it should not give the bond as prayed for above.

New Orleans, La., January 13, 1909.

(Signed) GEO. H. THEARD, *Judge.*

Sheriff's Return on Rule to Dissolve.

Filed January 21st, 1909.

Received Wednesday, January 13th, 1909, and on the 19th day of January, 1909, I served a copy of the within rule on Louisiana Navigation Company, Limited, plaintiff herein by personal service on J. C. Gilmore, one of their Attorneys.

(Signed) E. A. DROUET,
Deputy Sheriff.

Returned same day.
Sheriff's Fees 50¢.

Rule to Dissolve or Modify Injunction.

Filed January 21st, 1909.

Civil District Court, Division "C."

No. 88185.

LOUISIANA NAVIGATION CO., LTD.,
vs.
OYSTER COMMISSION OF LA. et als.

Rule of Dunbars, Lopez & Dukate Company to Dissolve or Modify Injunction.

On motion of John Dymond, Jr., Attorney for Dunbars, Lopez & Dukate Company, named defendants herein, and upon suggesting to this Honorable Court,

First. That under the writ of injunction issued *issued* herein, it has been enjoined and restrained from "slandering petitioner's possession and title or trespassing on petitioner's property and the said places known as "Creole Gap" and "Grand Pass," aforesaid, and from interfering with the full enjoyment of the said property by your petitioner, and employment of the said Steamboat Corine, her officers and crew and petitioner's employees, and from attempting to

lease, grant or license to others for fisheries or other purposes the said places or property situated within petitioner's survey as described in petitioner's title," which is most vague and indefinit-.

Second. That mover is engaged in the oyster industry in the State of Louisiana, operating large oyster canning factories at Dunbar and Rigolets, Louisiana, which said canning factories are in turn supplied with their raw material by vessels operated by mover in gathering oysters from the public natural oyster reefs of the State of Louisiana, East of the Mississippi River.

21 Third. That the bodies of water known as "Grand Pass," and "Creole Gap," are bodies of natural public navigable waters situated in the Parish of St. Bernard, this State, the former connecting the waters of Mississippi Sound through Oyster Bay to those of Chandeleur Sound and the Gulf of Mexico, and the latter leading or opening into Mississippi Sound, and have been known, recognized as open navigable waters of the State of Louisiana since the earliest surveys and maps of that locality, and the latter within the last thirty years has been opened into Chandeleur Sound, and is a navigable body of water.

Fourth. That operating under licenses formerly issued by the State of Louisiana, and now issued by the oyster commission of Louisiana, a department of the State Government, charged with the control of the Public Oyster waters and oysters reefs of this State, the oyster fishermen of this State have for years been fishing oysters in said waters without hinderance or interruption by anyone until the issuance of this injunction.

Fifth. That the waters of "Grand Pass and Creole Gap" contain, and have for years contained, natural oyster reefs; that is, oysters grow naturally therein, and such natural oysters reefs or the waters containing them have since the earliest legislation (Act 106 of 1886) been reserved from private ownership and held for the benefit of the public and for its use.

Sixth. That the lands in the Eastern portion of St. Bernard Parish were first surveyed by the United States Government in the years 1844 and 1845; the maps of said surveys were adopted by the State of Louisiana and formed part of the archives of the State of Louisiana, and said survey and maps constituted the official plats of survey in the State Land Office of the State of Louisiana, according to which, all land patents were subsequently issued by the State of Louisiana.

Seventh. That the township plat surveys aforesaid showed clearly and distinctly the shore line of all lands in the eastern peninsular of the Parish of St. Bernard, definitely and unmistakably separating the lands from the waters and showing the limits of each.

22

Eight-. That while not definitely so alleged in plaintiff's petition, plaintiff's cause of action, if any it had, is based upon whatever rights it acquired as the successor and assignee of the original patentees under the following patents:—

Patent No. 194. Issued to Richard Pindell, March 20th, 1867, for the following swamp lands subject to tidal overflow, to-wit:

Fractional Sections 23-24-25-26 in T. 10 S., R. 20 E., S. E. D. of Louisiana, St. Bernard Parish, containing 468.48 acres, according to the official plat of the survey of said lands in the State Land Office.

Patent No. 195. Same date, same patentee same character of lands, described as fractional Sections, Number- 33 and 34 in T. 10 S., R. 20 E., 569.72 acres, according to the official plat of the survey of said lands in the State land Office.

Patent No. 196. Same date, same patentee, same character of lands described as Fractional Sections 27-28 and 32 in T. 10 S., R. 20 E., 380.40 acres, according to the official plat of the survey of said lands in the State Land Office.

Patent No. 1039. Issued to J. C. Gilmore, Nov. 7, 1887, for all of the Fractional Section 13, T. 11 S., R. 19 E., 320 acres, same reference to plans.

Patent No. 5093. Issued to Jacob C. Gilmore, April 27, 1894, for the Fractional Section E. ½ of N. W ¼ of Section 4, T. 11 S., R. 20 E. 33 acres, same reference to plans.

Patent No. 706. Issued to Joseph C. Gilmore, March 15, 1887, for the Fractional Section W. ½ of Section 4, and Fractional N. E. ¼ of Section 5, T. 11 S., R. 20 E., 276 acres, same reference to plans.

23 Patent No. 761. Issued to W. V. Gilmore, April 11, 1887, for all of Section 20, T. 11 S., R. 20 E., 640 acres same reference to plans.

Patent No. 1038. J. C. Gilmore, Nov. 7, 1887, Fractional Section- 5-6-7- and 8, S. W. ¼ of Section 18, N. E. ¼ of N. W. ¼ of Section 19,- and W. ½ of Section 31, T. 11 S., R. 20 E., 990, acres *a*ame reference to plans.

Patent No. 870. W. V. Gilmore, June 22, 1887, for W. ½ of S. W. ¼ of Section 17,—S. E. ¼ of Section 18,—E. ½ of Section 19,—W. ½ of Section 29,—E. ½ of Section 30,—E. ½ of Section 31,—and W. ½ of Section 32, T. 11 S., R. 20 E., 1840 acres, same reference to plans.

Patent No. 750. J. C. Gilmore, April 7, 1887, for W. ½ S. W. ¼ of Section 28,—S. E. ¼ of section 29, E. ½ of Section 32,—W. ½ of N. W. ¼ of Section 33, T. 11 S. R. 20 E. 640 acres same reference to plans.

Patent No. 751. J. C. Gilmore April 7, 1887, Fractional N. ½ of N. E. ¼ of Section 5, T. 12 S. R. 20 E. 80 acres same reference to plans.

Patent No. 1040. J. C. Gilmore, Nov. 7, 1887, Fractional W. ½ of N. E. ¼,—E. ½ of N. W. ¼ Section 6, T. 12 S. R. 20 E., 160 acres, same reference to plans.

Patent No. 96*L*. Samuel L. Gilmore, Sept. 12, 1887, for S. ½ and N. W. ¼ of Section 5,—E. ½ of E. ½ and S. W. ¼ of S. E. ¼ of Section 6,—N. E. ¼ and N. ½ of S. E. ¼ of Section 7, and N. W. ¼ of Section 8, T. 12., S., R. 20 E. 1080 acres, same reference to plans.

Many of which said section- are fractional either specifically so designated, or shown by the area and all of said sales were made and patents issued according to the official plats of survey of said lands

on file in the State Land Office, which said plats of survey
24 showed that no navigable waters were included or intended to be included within the superficial area of the amount of lands designated in said patents of which the limits of the land as shown on the said plats of survey, and no title to any water bottom was so included or conveyed as no law existed authorizing the Register of the State Land Office or the Government of the State to sell the navigable water bottoms of the State, and no such water rights were conveyed or pretended to be conveyed by the patents issued by the State of Louisiana, and plaintiff's claim being founded upon no title whatsoever, but solely arising in the imagination of plaintiff's officials, and founded upon their dream of Empire, the injunction improvidently and improperly issued herein, and should be dissolved.

And upon further suggesting to the Court, in the event that the above and foregoing reasons are not self sufficient on rule to cause the dissolution of the injunction, and only in the alternative, relator, represents that it will be damaged by the maintenance of the injunction issued herein in a sum in excess of Five Thousand ($5,000.00) Dollars, in the expense of its boats and vessels and factories in being enjoined in fishing oysters on the said natural oyster reefs in "Grand Pass" and "Creole Gap" aforesaid, and that the bond given by plaintiff is entirely inadequate to protect defendant in the event the injunction should be eventually dismissed on the merits of this case.

It is ordered that the Louisiana Navigation Company, Limited, do show cause on Friday, January 29th, 1909, at 11 o'clock A. M., why the injunction herein issued should not be dissolved and set aside, or in the alternative, why plaintiff should not be required to furnish bond in favor of defendant, and mover, Dunbars, Lopez & Dukate Company, in the sum of Five Thousand ($5,000.00) Dollars and in failing to so furnish such bond, that said injunction be dissolved and set aside.

25 *Rule to Dissolve or Modify Injunction.*

Filed January 21st, 1909.

Civil District Court, Division "E."

No. 88185.

LOUISIANA NAVIGATION CO., LTD.,
vs.
OYSTER COMMISSION OF LA. et als.

Rule of the E. C. Joullian Canning Co. to Dissolve or Modify Injunction.

On motion of John Dymond, Jr., Attorney for the E. C. Joullian Canning Company, named defendant herein and upon suggesting to this Honorable Court,

That under the writ of injunction issued herein it has been enjoined and restrained from "slandering petitioner'- possession and title or trespassing on petitioner's property and the said places known as "Creole Gap" and "Grand Pass", aforesaid and from interfering with the full enjoyment of the said property by your petitioner and employment of the said steamboat Corine, her officers and crew and petitioner's employees and from attempting to lease, grant or license to others for fisheries or other purposes the said places or property situated within petitioner's survey as described in petitioner's title, which is most vague and indefinite.

Second. That mover is engaged in the oyster industry in the State of Louisiana, operating a large oyster canning factory at Violet, La., which said canning factory is in turn supplied with its raw material by vessels operated by mover in gathering oysters from the public natural oyster reefs of the State of Louisiana east of the Mississippi River.

Third. That the bodies of water known as the "Grand Pass", and Creole Gap", are bodies of natural public navigable waters situated in the Parish of St. Bernard, this State, the former connecting the waters of the Mississippi Sound through Oyster Bay to those of Chandelier Sound and the Gulf of Mexico and the latter leading or opening into Mississippi Sound and have been known recognized and used as open public navigable waters of the State of Lou-
26 isiana since the earliest surveys and maps of that locality and the latter within the last thirty years has be-n opened into Chandel-er Sound and is a navigable body of water.

Fourth. That operating under licenses formerly issued by the State of Louisiana and now iss-ed by the Oyster Commission of Louisiana, a department of the State Government charged with the control of the public oyster waters and oyster reefs of this State, the oyster fishermen of this State have for years been fishing oysters in said waters without hinderance or interruption by anyone until the issuance of this injunction.

Fifth. That the waters of "Grand Pass" and "Creole Gap" contain and have for years contain-, natural oyster reefs, that is, oysters grow naturally therein and such natural oyster reefs or the waters containing them have since the earliest Legislation (Act 106 of 1886) been reserved from private ownership and held for the benefit of the public and for its use.

Sixth. That the lands on the eastern portion of St. Bernard, Parish were first surveyed by the United States Government in the years 1884 and 1845, the maps of said survey were adopted by the State of Louisiana and formed part of the archives of the State of Louisiana and said survey and maps constituted the official plats of survey in the State Land Office of the State of Louisiana, according to which all lands patents were subsequently issued by the State of Louisiana.

Seventh. That the Township plat surveys aforesaid showed clearly and distinctly the shore line of all lands in the Eastern peninsular of the Parish of St. Bernard definitely and unmistakably separating the lands from the waters and showing the limits of each.

Eight-. That while not definitely so alleged in plaintiff'- petition,

plaintiff's cause of action, if any it has, is based upon whatever rights it acquired as the successor and assignee of the original patentees under the following patents:—

Patent No. 194. Issued to Richard Pindell, March 20th,
27 1867 for the following swamp lands subject to tidal owerflow to-wit:—Fractional Section- 23-24-25-26- in T. 10 S. R. 20 E. S. E. D. of Louisiana, St. Bernard Parish containing 468.48 acres according to the official plat of the survey of said lands in the State Land Office.

Patent No. 195. Same date same patentee, same character of lands described as Fractional Sections Number- 33 and 34 in T. 10 S. R. 20 E., 569.72 acres according to the official plat of the survey of said lands in the State Land Office.

Patent No. 196. Same date, same patentee, same character of lands described as Fractional sections 27-28 and 32 in T. 10 S. R. 20 E. 380.40 acres according to the official plat of the survey of said lands in the State Land Office.

Patent No. 1039. Issued to J. C. Gilmore Nov. 7th, 1887, for all of the fractional section 13 T. 11 S. R. 19 E. 320 acres — reference to plans.

Patent No. 5093. Issued to Joseph C. Gilmore April 27th, 1894 for the Fractional section E. ½ of N. W. ¼ of Section 4 T. 11 S. R. 20 E. 33 acres, same reference to plans.

Patent No. 706. Issued to Joseph C. Gilmore, March 15th, 1887, for the Fractional W. ½ of Fractional W. ½ of Section 4 and Fractional N. E. ¼ of Section 5 T. 11 S. R. 20 E. 276 acres same reference to plans.

Patent No. 761. Issued to W. V. Gilmore, April 11th, 1887 for all of section 20 T. 11 S. R. 20 E. 640 acres, same reference to plans

Patent No. 1038. J. C. Gilmore Nov. 7, 1887, Fractional Sections 5-6-7- and 8 S. W. ¼ Section 18 N. E. ¼ of N. W. ¼ of Section 19 and W. ½ of Section 31, T. 11 S. R. 20 E. 990 acres, same reference to plans.

28 Patent No. 870. W .V. Gilmore June 22, 1887, for W. ½ of S. W. ¼ of Section 17 S. E. ¼ of Section 18 E. ½ of Section 30, E. ½ of Section 31 and W. ½ of Section 32 T. 11 S. R. 20 E. 1840 acres, same reference to plans.

Patent No. 750. J. C. Gilmore, April 7th, 1887 for W. ½ of S. W. ¼ of Section 28 S. E. ¼ of Section 29 E. ½ of Section 32, W. ½ of N. W. ¼ of Section 33 T. 11 S. R. 20. 640 acres, same reference to plans.

Patent No. 751. J. C. Gilmore, April 7th, 1887, fractional N. ½ of N. E. ¼ of Section 5 T. 12 S. R. 20 E. 80 acres same reference to plans.

Patent No. 1040. J. C. Gilmore Nov. 7th, 1887, Fractional W. ½ of N. E. ¼ E. ½ of N. W. ¼ Section 6 T. 12 S. R. 20 E. 160 acres, same reference to plans.

Patent No. 961. Samuel L. Gilmore, Sept. 12th, 1887, for S. ½ and N. W. ¼ of Section 5 E. ½ of E. ½ and S. W. ¼ of S. E. ¼of Section 6 N. E. ¼ and N. ½ of S. E. ¼ of Section 6, N. E.

¼ and N. ½ of S. E. ¼ of Section 7, and N. W. ¼ of Section 8 T. 12 S. R. 20 E. 1080 acres, same reference to plans.

Many of which said section- are fractional either specifically so designated or so shown by the area and all of said sales were made and patents issued according to the official plats of survey of said lands on file in the State Land Office, which said plats of survey showed that no navigable waters were included or intended to be included within the superficial area of the amounts of the land designated in said patents or within the limits of the land designated in said patents or within the limits of the land as shown on the said plats of survey and no title to any water bottom was so included or conveyed as no law existed authorizing the Register of the State Land Office or the Government or of the State to sell the navigable water bottom of the State, and no such water rights were conveyed or pretended to be conveyed by the patents issued by the
29 State of Louisiana and plaintiff's claim being founded upon no title whatsoever but solely arising in the imagination of plaintiff's officials and founded upon their dream of empire, the injunction improvidently and improperly issued herein and should be dissolved.

And upon further suggestion to the Court, in the event the above and foregoing reasons are not sufficient on the rule to cause the dissolution of the injunction and only in the alternative relator represents that it will be damaged by the maintenance of the injunction issued herein in a sum in excess of Five Thousand ($5,000.00) Dollars, in the expense of its boats and vessels and factory in being enjoined in fishing oysters on the said natural oysters reefs in Grand Pass and Creole Gap aforesaid and that the bond given by plaintiff is entirely inadequate to protect defendant in the event the injunction should be eventually dismissed on the merits of this case.

It is ordered that the Louisiana Navigation Company, Limited, do shows cause on Friday January 29th, 1909, at 11 o'clock A. M. why the injunction herein issued should not be dissolved and set aside or in the alternative why plaintiff should not be required to furnish bond herein in favor of defendant and mover, the E. C. Joullian Canning Co., in the sum of Five Thousand ($5,000.00) Dollars and in failing so to furnish such bond that said injunction be dissolved and set aside.

STATE OF LOUISIANA,
Parish of Orleans:

E. C. Joullian being first duly sworn deposes and say- that the facts and allegations in the foregoing petition contained are true and correct to the best — affiant's information, knowledge and belief.

(Signed) E. C. JOULLIAN.

Sworn to and subscribed before me this 12th day of January, 1909.

(Signed) ERASTE VIDRINE,
[SEAL.] *Not. Pub.*

30 *Sheriff's Return on Motion to Dissolve.*

Filed January 28th, 1909.

Received Saturday January 23rd, 1909, and on the 25th day of January 1909, I served a copy of the within rule on Louisiana Navigation Company, Limited, Plaintiff herein by personal service on J. C. Gilmore, one of their Attorneys.

Returned same day.

Sheriff's Fees, 50¢.

(Sig.) —— DROUET,
Deputy Sheriff.

Sheriff's Return on Rule to Dissolve.

Filed January 28th, 1909.

Received Saturday January 23rd, 1909, and on the 25th day of January 1909, I served a copy of the within rule on Louisiana Navigation Company, Limited, Plaintiff herein by personal service on J. C. Gilmore one of their Attorneys.

Returned same day.

Sheriff's Fees, 50¢.

(Signed) E. A. DROUET,
D'y Sheriff.

Motion to Fix Exception.

Filed January 2nd, 1909.

Civil District Court, Division "E."

No. —.

LOUISIANA NAVIGATION COMPANY, LIMITED,
vs.
OYSTER COMMISSION OF LOUISIANA and E. C. JOULLIAN CANNING COMPANY et als.

On motion of J. C. & Thos. Gilmore and Edward N. Pugh, Attorneys for the Louisiana Navigation Company, Limited, plaintiff and on suggesting to the Court that the Oyster Commission of Louisiana, Dunbars, Lopez and Dukate Company, and the E. C. Joullian Canning Company, defendants herein, have filed several exceptions to plaintiff's petition.

31 It is ordered by the Court that said several exceptions of the Oyster Commission of Louisiana, Dunbars, Lopez and Dukate Company and the E. C. Joullion Canning Company be fixed for trial on February 5th, 1909, at 11 O'clock A. M. and that the said defendants be notified.

Motion for Order to Have Rule to Dissolve Stand as Answer of Defendant.

Filed February 5th, 1909.

Civil District Court, Division "E."

No. 88185.

LOUISIANA NAVIGATION COMPANY, LTD.,
vs.
OYSTER COMMISSION OF LOUISIANA and E. C. JOULLIAN CANNING COMPANY et als.

On motion of J. C. & Thomas Gilmore and E. H. Pugh, Attorneys for plaintiff, and on suggesting to the Court that the motions to dissolve the injunction herein filed by defendants, the Oyster Commission of Louisiana and the E. C. Joullian Canning Company and Dunbars, Lopez and Dukate Company join issue on the merits of the case and put at issue the allegations of plaintiff's petition and should be treated by the Court as in the nature of answers to the petition of plaintiff and that the Court should order that the said motions to dissolve the injunction stand as answers of the said Oyster Commission of Louisiana, the said E. C. Joullian Canning Company and Dunbars, Lopez and Dukate Company.

It is ordered by the Court that the motions to dissolve the injunction of the plaintiff herein filed by the Oyster Commission of Louisiana, the E. C. Joullian Canning Company, and Dunbars Lopez and Dukate Company be taken and stand as the respective answers of the said parties defendant.

32 *Motion to Dissolve Injunction Overruled.*

Extract from the Minutes of Division "E," Friday, February 5th, 1909.

Present: Hon. Geo. H. Theard, Judge.

In this cause, the plaintiff through its attorneys, Messrs. J. C. & Thos. Gilmore and E. N. Pugh, having presented to the Court a motion praying that the motions to dissolve the injunction of the plaintiff herein filed by the Oyster Commission of Louisiana, the E. C. Joullian Canning Company, and Dunbars, Lopez and Dukate Company be taken and stand as the respective answers of the said parties defendant; and the Court considering the law applicable to the case, and for the reasons orally assigned:

It is ordered that the said motion be filed and overruled.

Order Compelling Plaintiff to Furnish Additional Injunction Bond.

Extract from the Minutes of Division "E," Monday, February 15th, 1909.

Present: Hon. Geo. H. Theard, Judge.

This cause came up for further trial this day upon the rules to dissolve and the exceptions herein filed:

Present: Messrs. J. C. & Thos. Gilmore, and E. N. Pugh, Attorneys for Plaintiff in suit and defendant in rules.

Messrs. John C. Wickliffe and John Dymond, Jr., Attorneys, for defendant in suit and plaintiff in rules.

When, the Court having announced that it would take up first and separately the question of sufficiency of the injunction bond, after hearing evidence and argument of counsel, for the reasons orally assigned by the Court:

It is ordered that plaintiff in suit do furnish an additional injunction bond in the sum of Ten Thousand Dollars ($10,000.00), and that, in default of it so doing, within forty-eight hours (48) the writ of injunction herein issued, be dissolved.

It is further ordered that all other matters now pending
33 before the Court in this cause be continued for trial to Thursday February 18th, 1909.

Civil District Court, Division "E."

No. 88185.

LOUISIANA NAVIGATION CO., LIMITED,
vs.
OYSTER COMMISSION OF LOUISIANA et al.

Testimony and Notes of Evidence Taken in Open Court, before the Hon. Geo. H. Theard, Judge Presiding, on the 15th Day of February, 1909, on Behalf of Defendants.

Present: Messrs. John C. Wickliffe, John Dymond, Jr., J. C. & Thomas Gilmore, E. N. Pugh, representing parties in interest.

On the Question of the Sufficiency of the Bond.

J. B. DANENHAUER, JR., sworn by the Minute Clerk, testified as follows:

Direct examination by Mr. WICKLIFFE:

NOTE.—The Court announces that it will take up first, the matter of the sufficiency of the bond on the injunction.

Q. Mr. Dananhauer, what is your connection with the Oyster Commission of Louisiana?

A. I am chief clerk at present.

Q. Where—In the office in the city of New Orleans?
A. Yes, sir.
Q. How long have you held that position?
A. Since the 1st of October 1908.
Q. Were you connected with the Commission before that date?
A. Yes, sir.
Q. In what capacity?
A. As Auditor—Travelling Auditor of the Commission.
34 Q. How long had you occupied that position before the 1st of October 1908?
A. About four years, I think it was.
Q. Are you familiar with the books of collections of the Oyster Commission?
A. Yes, sir.
Q. You had charge of those books as clerk?
A. Yes, sir.
Q. You made the entries in the books?
A. Yes, sir.
Q. As Travelling Auditor were you also familiar with the collections of the Commission——
A. Yes, sir.
Q. And with the territory from which the revenues come?
A. Yes, sir.
Q. Have you examined the records of the Oyster Commission for the year beginning—for the last year?
A. Beginning July 1st 1907?
Q. And ending when?
A. June 30th, 1908.
Q. That is the fiscal year of the Commission?
A. Yes, sir, the fiscal year.
Q. Mr. Danenhauer, I hand you a paper marked "D-1," and ask you what that is?
A. I compiled that,—of the revenues that approximately came out of the disputed territory in question now.
Q. That is your handwriting?
A. Yes, sir.
Q. And is a memorandum that you made from the books of the Commission showing the revenues that come out of the disputed territory covered by this injunction,—during that period, from July 1st, 1907 to June 30th, 1908?
A. Yes, sir.
Q. Will you please state what those revenues are, the sources from which they are derived, and their character as shown by an inspection of the books?
A. The first is the privilege tax amounting to $8,681.00; the next, is the canner's license, $300.00; the next is the shop license $85.00; the next, is the scraper's license, $675.00, and the next is
35 the vessel license, $826.00,—making a total of $10,567.00.
Q. That comes out of this disputed territory covered by this injunction?
A. Yes, sir.

Q. Mr. Danenhauer, when are those sums collected, between what dates?

A. They are collected, the majority of them, between the 1st of September and 30th of April.

Q. The largest amount here, privilege tax, $8,681.00,—when is the last of that collected?

A. The last of that is collected about the last of March; the canneries run up to about the 1st of April.

Q. What is the basis of the tax,—what is the rate of the privilege tax?

A. The privilege tax is three cents on every barrel of oysters that are handled.

Q. Now after the oyster season is over, that is after the 30th of April, or even after the 1st of April, would it be possible to collect this license—this amount?

A. From the 1st of April until the 1st of September, there is practically no revenue coming in from that district.

Q. Then, if this amount of $10,567.00 would not be collected by the Oyster Commission before say the middle of April, would it be possible for the Oyster Commission to collect it at all?

A. No, sir.

Q. Or would it be a dead loss to the said Commission?

A. Practically a dead loss to the State.

Q. Now, what canneries are there in this disputed territory which derive their oysters from it?

A. Three canneries,—Dunbar, Lopez & Dukate Company; they are at the Rigolets; they have a plant at the Rigolets; now the same concern, Dunbar, Lopez & Dukate have a plant at Dunbar, Louisiana; and the E. C. Joullian Packing Company, which has a plant at Violet.

Q. That is at the mouth of the Lake Borgne Canal, is it not?

A. Yes, sir, in St. Bernard Parish.

36 Q. Now, these shop licenses,—where are those shops situated?

A. They are all situated—two of them out in the marsh,—I think they have no situation; one is called Bayou Johnson; and some of them are right in the marshes. They were fishing on boats last year.

Q. Now, in marshes in this disputed territory?

A. Yes, sir; and there is one at Dunbar.

Q. Who operates that?

A. Philip and Jacob Yost.

Q. Now, the scraper's license $675.00; what is that? Those scrapers are operated where?

A. They are operated on dredges, on power boats in the disputed territory.

By Mr. PUGH: I object to this as irrelevant. I don't see what bearing it has on the question of whether or not there should be an increase in the bond. The only allegation in the motion, and the reason given, is, that we are depriving them of their revenues.

By the COURT: The objection is overruled.

By Mr. WICKLIFFE:

Q. Now, my question is, where do those dredge boats operate, in and out of this disputed territory?

A. The majority of them are in Creole Gap and Grand Pass.

Q. Now, these vessel licenses—where do they fish?

A. In the same territory.

Q. Now, this year, up to the time this suit was brought, how did the business or revenues of this year from the 1st of October—is that approximately the time the revenues commence?

A. Yes, sir.

Q. From the 1st of October, up to the time that this suit was brought and the injunction sued out,—how did the revenues for the year commencing July 1st 1908, and ending June 30th, 1909, compare with the revenues for the same period of the preceding year? Were they larger or smaller, or about the same?

A. That is up to October 1st?

37 Q. Well, from October 1st up to the time this suit was brought?

A. They were much larger.

Q. They were much larger for the same term?

A. Yes, sir.

Q. Now Mr. Danenhauer, from your knowledge of the books of the Commission, and the operations of the Commission, extending through a period of five years, and in the collection or handling of its revenues, would the aggregate of $10,567.00 for the last year be smaller or larger than the aggregate would have been for the year had these operations not been interfered with by the injunction?

A. They would have been much larger this year.

Q. Mr. Danenhauer, in order to procure this injunction, the plaintiff has given a bond for $2,500.00, to secure and pay whatever damages might result to the Oyster Commission, from the stoppage of the revenues, and also to cover Dunbar, Lopez & Dukate and E. C. Julian Packing Company for their loss owing to the operation of the injunction. If it is held that they were not entitled to the injunction, how close would that come to covering the Oyster Commission alone?

By Mr. PUGH: I object to that question: I don't think the witness is the court. I don't think he can ask the witness to decide the whole question.

By the COURT: I maintain the objection.

By Mr. WICKLIFFE:

Q. These figures are taken from the record books of the Oyster Commission which you keep?

A. Yes, sir.

Q. On this paper "D-1?"

A. Yes, sir.

By Mr. DYMOND:

Q. From your knowledge of the Oyster industry as carried on in the parish of St. Bernard at the three canneries, two owned by Dunbar, Lopez & Dukate, one being located at Dunbar, the other at the Rigolets, and the E. C. Julian plant located at Violet,—would those companies be affected in their supply of oysters by an injunction restraining them from entering upon the territory described in this petition?

A. They certainly would. It would practically put them
38 out of business.

Cross-examination by Mr. GILMORE:

Q. You referred to a shop license; what is that?

A. The Commission has licensed shucking plants, and they are classed as shops in their license. They have their license drawn as shops.

Q. For what extent of time is that license issued?

A. From the 1st of September to the 30th of August.

Q. And are they payable in advance?

A. Yes, sir.

Q. Well, all those licenses then, that were issued, were issued in September, for the year, and had been paid for in September?

A. No, sir, the majority of them were issued in about November, I think. It is generally the case that these boats don't take their license out until such time as they go out, and the majority get out around that time—November.

Q. They were issued prior to this injunction, and the issuance of this injunction?

A. I don't know the date that the injunction was issued.

Q. How is it that some were issued as late as November?

A. We have them even up to now; we are issuing some licenses.

Q. Is it not a fact that the majority of these licenses are issued in September?

A. (No answer.)

Q. When does the oyster season begin?

A. The first of September.

Q. Is it not customary for those boats to be ready for the oyster season?

A. Yes, sir.

Q. Are they allowed by the Commission to fish out there before they procure a license?

A. No, sir.

Q. Those licenses are all paid for in advance for the year?

A. Yes, sir.

Q. How much have you collected on these licenses that were issued for this year,—that the Commission has issued?

39 A. I don't know.

By Mr. WICKLIFFE: In connection with the testimony of the witness, we offer, produce and file in evidence the document marked "D-1," identified by the witness as being a memorandum of these amounts.

GEO. H. DUNBAR, sworn by the Minute Clerk, testified as follows:

Direct examination by Mr. DYMOND:

Q. You are Mr. George H. Dunbar?
A. Yes, sir.
Q. You live in this city?
A. Yes, sir.
Q. Are you the President of the corporation known as Dunbar, Lopez & Dukate Company?
A. Yes, sir.
Q. Do you operate, through that company a canning factory for the purpose of canning oysters at Rigolets, Louisiana?
A. Yes, sir.

By Mr. PUGH: As I understand, this is just evidence as to the sufficiency of the amount of the bond. I understand it to be restricted to that. If that is the case, I will not make any objection right now.
By the COURT: That is the only thing I am trying now.

By Mr. DYMOND:

Q. Do you also operate a cannery at Dunbar, Louisiana?
A. Yes, sir.
Q. Are you familiar, Mr. Dunbar, with the general topographical and geographical situation of the places in what is commonly called the Louisiana marsh?
A. Yes, sir.
Q. Are you familiar with the location of "Isle a Pitre," and are you familiar with the location of the place commonly known as Creole Gap?
A. Yes, sir.
Q. And with the location of the place commonly known as Grand Pass?
A. Yes, sir.

By Mr. PUGH: I object to that. I don't see the relevancy of it.

By Mr. DYMOND:

Q. How long have you been familiar with those places?
A. I suppose about twenty or twenty-five years.
40 Q. What article of commerce do the waters of Creole Gap and Grand Pass, produce?
A. Oysters.
Q. To your knowledge, how long have they been producing oysters?
A. Twenty or twenty-five years as far as I know. As long a time as I have been going there.
Q. Does the Dunbar, Lopez & Dukate Company operate boats and vessels for the purpose of fishing and gathering oysters?
A. They have operated them there.
Q. Of course, they are not operating there now?

A. No, sir, not now.

Q. Have you gotten oysters—or has your company gotten oysters from Grand Pass and Creole Gap in past years for canning at your factory?

A. They have.

Q. Are you able from your knowledge of the business of your company, to make a statement as to what you would consider the loss that your company would probably sustain by virtue of the fact that it was prevented from getting any supply of oysters from Creole Gap or Grand Pass, by reason of the injunction which has been issued in this case,—taking into consideration the loss incidental to your fleet of vessels that have been operated, as well as your loss of any profit on the business of canning those oysters?

A. Do I understand you to say from what period?

A. Say for one year.

A. For the season, you mean?

Q. Yes.

A. Well, off-hand, I couldn't very well say, but I say at the minimum not less than $5,000.00 anyway.

Q. Would that be for both of your factories at Dunbar, and the Rigolets, or one of those?

A. I suppose I was stating that for the one factory, at Dunbar.

Q. Does the Rigolets factory do about as much business as the other?

A. Yes, sir, just as much as the other factory; they are
41 about the same capacity.

Q. Therefore, I would judge that the two ought to sustain a loss of about $10,000.00?

A. Yes, sir, that is my idea; that is, approximately.

Q. Now, are you familiar, Mr. Dunbar, in a general way, with the other oyster canneries in the State?

A. Well, not any other than to know that we all draw our oysters from about the same locality.

Q. Do you know if the E. C. Julian Company, with its factory located at Violet, Louisiana, also draws its supply of oysters from this territory?

A. I wouldn't say positively, but from what I have heard we all have been drawing from it.

Q. You don't know positively?

A. No, sir, I have no proof of that.

Q. Mr. Dunbar, assuming that this injunction was not dissolved until after the close of the oyster season, on the 30th of April, would it be possible for your company to re-gain that loss, or would it be an absolute loss?

A. It would be an absolute loss.

Q. In other words, under the oyster law, you cannot operate your factories after the 1st of May?

A. No, sir.

Cross-examination by Mr. GILMORE:

Q. When did you open your factory this year?—taking the one at Dunbar; when was that opened?

A. I cannot recall the date exactly, but we generally begin some time in October.

Q. This year it was in October?

A. I cannot recall; I think it was in October. We hardly ever go later than that.

Q. If it not a fact that you had a great supply of canned goods on hand this year?

A. We did have canned oysters on hand this year, yes, sir.

Q. Is it not a fact, that you had a large supply of canned goods on hand from last season?

42 A. Canned oysters, yes, sir.

Q. Is it not a fact that your factory opened later for that reason, this year, than in previous years?

A. Well, it is not always a fact that we open the season later than others,—at certain times; it depends on the quality of the oysters sometimes; sometimes they are better in the early season than a little later. We have to be guided by that a great deal.

Q. I am talking about this year. Didn't you open later this year then in previous years?

A. Not very much I think; I haven't the figures.

Q. Can you remember what month?

A. I think it was October.

Q. You think it was October?

A. Yes, sir.

Q. Did you have a strike at your place?

A. Well, I never called it a strike.

Q. Well, your factory was shut down wasn't it?

A. Closed down for about seven or eight days, I guess,—worked a little all the time, but not full force. That was at Dunbar.

Q. Do you know to what extent you have bought canned oysters this year?

A. Oysters to be canned?

Q. Yes, sir; to what extent have you bought them?

A. I can't say; I suppose the average, about the same as the other years.

Q. In spite of the fact that you had a big supply of canned oysters from last year?

A. Yes, sir; we expected the business to change, and we would have got rid of all we had, and all we would have put up.

Q. Wasn't your company originally independent from the Lopez & Dukate Company?

A. Yes, sir.

Q. When were you consolidated with them?

A. On the 4th of September, I think, we organized our company.

Q. Didn't they bring a large supply of canned goods into the corporations that they had left over from last year?

43 A. Well, the supply was about evenly divided among the different canneries that formed this corporation.

Q. Both—the two corporations had a large supply from the year previous?

A. About evenly divided.

Q. Was it a large supply?

A. A good-sized supply; nothing frightful.

FRANK T. PAYNE, sworn by the minute clerk, testified as follows:

Direct examination by Mr. DYMOND:

Q. Mr. Payne, you are, as I understand, the Chief Surveyor of the Oyster Commission?

A. Yes, sir.

Q. Prior to that, you were one of the deputy surveyors?

A. Yes, sir.

Q. How long have you been connected with the Oyster Commission?

A. About five years, sir.

Q. During that time, have you had occasion to go around through the various oyster territories of the State?

A. Yes, sir; I have been through all the districts, and also to the different oyster factories of the different districts.

Q. Are you familiar with the canning factory of the E. C. Julian Company?

A. Yes, sir.

Q. You know its location?

A. I do.

Q. Do you know its capacity?

A. Well, it is similar to that of Lopez & Dukate at Dunbar, and also that at the Rigolets; about the same.

Q. Do you know its source of supply of raw material?

A. Yes, sir, it is derived principally from the disputed territory in this case.

NOTE.—No cross-examination.

J. B. DANENHAUER, being recalled, testified as follows:

By Mr. DYMOND:

Q. Mr. Danenhauer, are you familiar with the plant of the
44 E. C. Julian Company at Violet, Louisiana?

A. Yes, sir.

Q. Are you familiar with the plant at Dunbar, of the Dunbar, Lopez Company—at the Rigolets, and also at Dunbar?

A. Yes, sir.

Q. How does the capacity of the E. C. Julian Company's plant at Violet, compare with the capacity of the two Dunbar plants, in the matter of the quantity of oysters canned?

Q. Well, the E. C. Julian Company can between ten and twelve thousand barrels a month. Now, the Dunbar & Lopez Company they can about fifteen to seventeen thousand barrels.

Q. At each factory?
A. Yes, sir.
Q. Now, if the loss by virtue of this injunction prohibiting the Dunbar plants from getting oysters from this territory were five thousand dollars for each factory, what would be the loss, or possible loss that the E. C. Julian factory would sustain?

By Mr. PUGH: I object to that. He has been trying to prove by analogy, or comparative value, what the damages were. Now he asks the witness to give his opinion about it.

By Mr. DYMOND:

Q. As traveling auditor did you have occasion to check up the records of the E. C. Julian Company as to the oysters canned by them?
A. Yes, sir.
Q. Are you therefore familiar with the volume of business done by that company?
A. That is, not at the present time.
Q. I mean prior to this?
A. Yes, sir.
Q. Are you aware as to whether the E. C. Julian Company gets from the Oyster Commission a license for boats with scrapers, or other boats, to operate in this territory?
A. Yes, sir.
Q. Are you familiar with the amount of oysters that the E. C. Julian Company handled last year?
A. Yes, sir.
Q. About how much per month did they handle last year?
A. Well, they averaged about eleven thousand barrels per month, last year.
45 Q. Did they get any portion of their oysters from the territory in dispute in this case?
A. They got the majority of their oysters from this territory.
Q. Would they thereby be effected by the present injunction, as far as their business was concerned?
A. Yes, sir.
Q. To what extent would they be effected by this injunction?
A. I should think that they would lose in the neighborhood of beween three and five thousand dollars per month,—that is, between three thousand and thirty-five hundred.

E. C. JOULLIAN, sworn by the Minute Clerk, testified as follows:

Direct examination by Mr. DYMOND:

Q. Are you the E. C. Julian, President of the E. C. Julian Canning Company, owning and operating a canning factory at Violet?
A. Yes, sir.
Q. Are you the E. C. Julian, President of the E. C. Julian Company, who are enjoined in this suit, from fishing oysters in Creole, Gap and Grand Pass?
A. Yes, sir.

Q. Have you ever operated, and do you ordinarily operate, boats and vessels to insure a supply of oysters for your canning factory?

A. Our whole fleet is operated for that purpose.

Q. Have your boats ever operated in fishing oysters in Grand Pass and Creole Gap?

A. Yes, sir.

Q. They are not operating now, since the injunction was issued?

A. No, sir, not now; not since then.

Q. What effect has been produced on your boats and business, as a result of this injunction, restraining you from fishing on the alleged property of the plaintiff?

A. Well, I will have to detail that. The result has been this: First and foremost, that the boats that I have been able to keep busy, to keep my cannery busy, have been idle. They have been going to the Cabbage reef, which is not fit for anything; there are no oysters to get there, unless we work in Grand Pass or Creole Gap, or Grand Bank; and the Grand Bank oysters are too small
46 to be marketable, generally speaking. I have a business on hand of fifteen thousand boxes of oysters, and they were sold upon the condition that I could give them the same oysters that I submitted as samples, in November, which came out of Grand Pass; and if I cannot deliver those, I am liable to almost any kind of damage that any court might say I should pay to the buyers; besides, the *the* profits I would lose, and I am losing every day not less than $25.00, from the fact that my boats have been stopped through Grand Pass and Creole Gap. I can prove that by my boats, men, and everything else.

Q. You are losing $25.00 a day from the inoperation of your boats alone?

A. Yes, sir; not anticipating any margin or anything.

Q. What effect has it produced on your factory as far as its supply of raw material is concerned?

A. Since we were stopped from there, it has affected a two days' idleness in the week.

Q. What does that mean in dollars and cents to your company?

A. Not anticipating margins at all, it means—number of men employed to a payroll of about $25.00 a day.

Q. Would that continue through the remaining of the season if this injunction were continued for the remainder of the season?

A. It certainly will,—and get worse, because oysters on Grand Bank are getting scarcer.

Q. What therefore would you state that your damage would probably be as a result of the maintenance of this injunction, until it could be decided on the merits of the case?

A. Without having taken a pencil and paper and figuring it, I would estimate the damage to be about $10,000.00. That is what I stated to you in your office when I requested that some action be taken. I considered we had rights in there under the laws of Louisiana, and should not be stopped unless the parties gave proper bond to reimburse us.

Q. When did you establish your cannery in Louisiana?

A. I think I took out the charter in February, 1905.

Q. That is four years ago?

47 A. Yes, sir, I think so.

Q. Have you been fishing oysters in Creole Gap and Grand Pass during the past four years?

A. Constantly; every year a number of boats employed.

Q. Were others fishing in there?

A. Yes, sir; notwithstanding that I had boats fishing for the Mississippi factory, out of Grand Pass twenty years,—getting boats to go in Grand Pass twenty years ago.

Q. Did anybody ever interfere with you?

A. No one, until Steve Mallarsh, a one-armed man went out there and warned my people to get away.

Q. When was that?

A. I think two or three months ago; I am not clear as to that—just recently, I should say. My man came and reported, and I told him to pay no attention to him and go about that business; and that is when I reported to you.

Q. Is that the first time you were molested?

A. In any way, shape, or form, yes, sir, except when we received notice that the State of Louisiana from Mississippi, would claim those lands as belonging to Louisiana. And that was the State of Louisiana—at the time they claimed the lands.

Q. That is when you were fishing for your Mississippi factory?

A. Yes, sir, before they passed the Act in Louisiana prohibiting any one taking oysters belonging to the State.

Q. That was before you established your cannery in Louisiana?

A. Yes, sir.

(Stamped:) No. 88185. Civil District Court, Parish of Orleans. Filed March 29, 1909. A. H. Flemming, Dy. Clerk.

48 EXHIBITS, FOUR IN NUMBER, OFFERED IN EVIDENCE BY COUNSEL FOR PLAINTIFF.

Filed March 19th, 1909.

DEPARTMENT OF THE INTERIOR,
UNITED STATES LAND OFFICE,
NEW ORLEANS, LA., *February* 13, 1909.

We the undersigned Register and Receiver of the United States Land Office, New Orleans, La., do hereby certify that the records of this office show that Sections 23 to 28 inclusive and Section- 32, 33, and 34 of T/10 S. R. 20 E. South Eastern District Louisiana, East of the Mississippi River, were selected by the State of Louisiana under act of 2nd March, 1849, and were approved by the Honorable Secretary of the Interior on May 6, 1852.

We further certify that our records fail to disclose any adverse claimant.

(Signed) WALTER L. COHEN, *Register.*
(Signed) A. B. KENNEDY, *Receiver.*

NEW ORLEANS, LA., *February* 13, 1909.

We the undersigned Register and Receiver of the United States Land Office, New Orleans, La., do hereby certify that the records of this office show, That Sections 4 to 9 inclusive, Sections 17, 18, 19 and 20 and Section- 27 to 36 inclusive of T. 11 S. R. 20 E. South Eastern District, Louisiana, East of Mississippi River was selected by the State of Louisiana, under Act of 2nd March, 1849, and that the same were approved by the Honorable Secretary of the Interior of May 6, 1852.

We further certify that our records fail to disclose any adverse claimant.

(Signed) WALTER L. COHEN, *Register.*
(Signed) A. B. KENNEDY, *Receiver.*

49 NEW ORLEANS, LA., *February* 13, 1909.

We the undersigned Register and Receiver of the United States Land Office, New Orleans, La., do hereby certify that the records of this Office show Sections 1, 11 to 15 inclusive and Section- 20 to 36 inclusive of Township 11 South of Range 19 East, South Eastern District East of the River was selected by the State of Louisiana under the Act of March 2nd, 1849, and that the same was approved by the Secretary of the Interior on May 6, 1852.

We further certify that our records fail to show any adverse claimant.

(Signed) WALTER L. COHEN, *Register.*
(Signed) A. B. KENNEDY, *Receiver.*

NEW ORLEANS, LA., *February* 13, 1909.

We the undersigned Register and Receiver, of the United States Land Office, New Orleans, La., do hereby certify that the records of this office show that Sections 1 to 11 inclusive, Sections 17, 18, 19, 20 and 21 and Section- 28 to 32 inclusive of T. 12 S. R. 20 E., South Eastern District, La., East of Mississippi River, Louisiana, were selected by the State of Louisiana under the act of 2nd March, 1849, and that the same was approved by the Honorable Secretary of the Interior on May 6, 1852.

We further certify that our records fail to disclose any adverse claimant.

(Signed) WALTER L. COHEN, *Register.*
(Signed) A. B. KENNEDY, *Receiver.*

50 *Order Annulling and Setting Aside Order of February 15th, 1909, Ordering Plaintiff to Furnish Additional Injunction Bond—Extract from the Minutes of Division "E," Wednesday, February 17th, 1909.*

Present: Hon. Geo. H. Theard, Judge.

In this matter, for the reasons this day orally assigned:

It is ordered by the Court, "Ex proprio motu," that the order rendered herein February 15th, 1909, ordering the plaintiff in

suit to furnish an additional injunction bond in the sum of ($10,000.00), be and the same is hereby set aside and annulled.

Exceptions Maintained in so far as to Order the Plaintiff to Amend His Petition—Extract from the Minutes of Division "E," Thursday, February 18th, 1909.

Present: Hon. Geo. H. Theard, Judge.

The exceptions herein filed by defendants came on this day for trial.

Present: Messrs. T. C. & Thos. Gilmore and E. N. Pugh, Attorneys for Plaintiff.

Messrs. T. C. Wickliffe and John Dymond, Jr., Attorneys for Defendants and Exceptors.

And after hearing pleadings and argument of Counsel, the Court considering that the said exceptions are well founded, to the extent hereinafter set forth, for the reason orally assigned:

It is ordered that the said exceptions be maintained, in so far as to order the plaintiff to amend its petition, within (5) days, by setting forth more clearly and definitely the description of the property referred to in its petition, and that, upon failure to comply with this order, that the plaintiff's suit be dismissed as in case of nonsuit, at its costs; in other respects the said exceptions are overruled.

51 *Motion for Additional Delay.*

Filed February 24th, 1909.

Civil District Court, Division "E."

No. 88185.

LOUISIANA NAVIGATION CO., LTD.,
vs.
OYSTER COMMISSION OF LA. et als.

On motion of J. C. & Thos. Gilmore, and E. N. Pugh, Attorneys, for plaintiff, Louisiana Navigation Company, Limited, and proper showing to the Court,

It is ordered by the Court that an additional delay of five days be allowed plaintiff to file amendments to the petition as required by the order of the Court of Thursday 18th, inst.

Supplemental and Amended Petition and Order and Four Exhibits.

Filed February 27th, 1909.

Civil District Court, Division "E."

No. 88185.

LOUISIANA NAVIGATION CO., LTD.,
vs.
OYSTER COMMISSION OF LOUISIANA and E. C. JOULLIAN CANNING Co. et als.

To the Honorable the Civil District Court for the Parish of Orleans:

The supplemental and amended petition of the Louisiana Navigation Company, Limited, plaintiff, respectfully represents:

That in obedience to the order of Court of this 18th inst. requiring an amendment of the plaintiff's petition in order to set out more specifically and definitely the boundaries and area of the plaintiff's possession and location of the places referred to in *in* the plaintiff's petition the plaintiff files herewith a description of the property of petitioner as originally derived by its authors from the State of Louisiana and conveyed to or acquired by mesne conveyances by
52 petitioner, and comprising the North East extremity or end of the Peninsula of St. Bernard as outlined and defined in the "Boundary Case" between the State of Louisiana and Mississippi, as contained in Vol. 202 United States Supreme Court Reports at page 1 et seq., establishing the boundary between the two States That the said part of said Peninsula is also known as appears by the said "Boundary Case" as Isle of Pitre or the Louisiana Coast Line, the said decision showing the "Thalweg" or boundary to run between the said Isle a Pitre and Cat Island. Petitioner shows that its possession embraces the whole of the territory known as Ilse a Pitre and the lands described in the annexed transfer made part hereof. That the said several sections and Fractional sections of land or upland and land under water therein set forth adjoin and form one piece or block of swamp and overflowed land continuously or diagonally in the Section or fractional Section described through Township 10 S. — R. 20 E., Township 11 S. — R. 20 E. and into Township 12 S. — R. 20 E. and Section 13 in Township 11 S. — R. 19 E., all in the South Eastern East of River Land District, Parish of St. Bernard, Louisiana, of which plaintiff holds possession, as set forth in the said several patents and *mense* conveyances as will fully be shown on the trial of this case. That petitioner files herewith a plotted diagram of the whole of said property and a copy of a map of the State Land Office of the said Township 10 S. — R. 20 E. Certified, New Orleans 19th, 1867, State Land Office Ad. Dupre, Register, showing the said islands and portion of said land in said Township 10 S. — R. 20 E. and the United States Coast Survey Chart No. 190, issued November 1887, and refers to the several maps or

charts contained in the transcript and report of the decision of the said "Boundary Case," 202 U. S. P. 1 et seq., showing in detail the location of the places known as "Creole Gap" in Township 10 S. — R. 20 E. and Township 11 S. — R. 20 and "Grand Pass" in Township 11 S. — R. 20 E. lying within the limits and area of petitioner's survey and the said patents and showing the boundaries of said property and petitioner- possession and enjoyment of the said property together with all the rights of accretion, advantages and ap-
53 purtenances thereunto belonging or in anywise appurtenant.

Wherefore petitioner prays that this supplemental and amended petition may be filed; that the Oyster Commission of Louisiana, the E. C. Joullian Canning Company, and Dunbars, Lopez and Dukate Company, defendants, through their respective proper officers, be cited to appear and answer the supplemental and amended petition and after due proceedings had that there be judgment in favor of petitioner, Louisiana Navigation Company Limited, as prayed for in said original and supplemental petitions and perpetuating the injunction herein and for costs in solido against defendants, and for general relief.

(Signed) J. C. & THOMAS GILMORE AND EDWARD N. PUGH,
Att'ys for Plaintiff.

Order.

Let this supplemental and amended petition be filed.
New Orleans March 1st, 1909.
(Signed) GEO. H. THEARD, *Judge.*

Exception of Oyster Commission of La.

Filed March 9th, 1909.

Civil District Court, Division "E."

No. 88185.

LOUISIANA NAVIGATION CO., LTD.,
VS.
OYSTER COMMISSION OF LA. et als.

Comes the Oyster Commission of Louisiana, defendant in the above numbered and entitled cause, and before answer, and reserving the right to answer herein should this exception be over-ruled, and excepts to the petition and amended petition herein filed by plaintiff, for this, to-wit:—That said petition and amended petition do not set forth any cause of action against this defendant.

Wherefore defendant prays that said petition and amended petition be dismissed at plaintiff's costs.

(Signed) JOHN C. WICKLIFFE,
Att'ys for Oyster Commission of La.

54 *Exception of Joullian Canning Company.*

Filed March 10th, 1909.

Civil District Court, Division "E."

No. 88185.

LOUISIANA NAVIGATION COMPANY, LTD.,
vs.
OYSTER COMMISSION OF LA. et als.

And now into Court, through undersigned counsel, comes the E. C. Joullian Canning Company, named defendant herein, for the purpose of excepting to plaintiff's supplemental petition, and for cause of exception says, that the said supplemental petition, together with the said original petition, and the exhibits thereto annexed discloses no cause of action on the part of plaintiff.

Wherefore, the premises considered, exceptor prays that this exception be maintained, and that it be hence dismissed at plaintiff's costs.

(Signed) JOHN DYMOND, JR.,
Att'y for E. C. Joullian Canning Company.

Exception of Dunbars, Lopez and Dukate Company.

Filed March 10th, 1909.

Civil District Court, Division "E."

No. 88185.

LOUISIANA NAVIGATION CO., LTD.,
vs.
OYSTER COMMISSION OF LA. et als.

And now into Court, through undersigned counsel, comes Dunbars, Lopez and Dukate Company, named defendants herein for the purpose of excepting to plaintiff's supplemental petition, and for cause of exception says, that the said supplemental petition together with the said original petition, and the exhibits annexed disclose no cause of action on the part of plaintiff.

Wherefore, the premises considered, exceptor prays that this exception be maintained, and that it be hence dismissed at plaintiff's costs.

(Signed) JOHN DYMOND, JR.,
Att'y for Dunbars, Lopez and Dukate Company.

55 *Judgment.*

Rendered March 18th, 1909; Signed March 19th, 1909.

Civil District Court, Division "E."

No. 88185.

LOUISIANA NAVIGATION CO., LTD.,
vs.
OYSTER COMMISSION OF LA. et als.

The exception of no cause of action herein filed by the Oyster Commission of La., on March 9th, 1909, and by Dunbar, Lopez and Dukate and E. C. Joullian Canning Company, on March 10th, 1909, came on this day for trial.

Present: Messrs. J. C. & Thos. Gilmore, and Edward N. Pugh, Attorneys for plaintiff.

Messrs. John C. Wickliffe and John Dymond, Jr., Attorneys for defendants and exceptors.

And, after hearing pleadings, evidence and argument of counsel, the court considering that the said exception of no cause of action is well founded for the reasons orally assigned.

It is ordered, adjudged and decreed that the said exceptions of no cause of action be maintained and that the plaintiff's demand be rejected at its costs.

Judgment read and rendered in open Court March 18th, 1909.

Judgment signed in open Court March 19th, 1909.

(Signed) GEO. H. THEARD, *Judge.*

56 *Note of Evidence.*

Filed March 22nd, 1909.

Civil District Court, Division "E."

No. 88185.

LOUISIANA NAVIGATION CO., LTD.,
vs.
OYSTER COMMISSION OF LA. et als.

Note of Evidence in the Above Numbered and Entitled Cause Taken in Open Court on the 18th Day of March, 1909, Before the Honorable George H. Theard, Judge.

Present: Messrs. E. N. Pugh, J. C. & Thos. Gilmore, John C. Wickliffe, John Dymond, Jr., representing parties in interest.

NOTE.—It is agreed that in this matter reference may be made to the patents of plaintiff's authors as the same may be either furnished

in original or what is reproduced in the records in the boundary suit of State of Louisiana vs. State of Mississippi, and that the maps attached to plaintiff's petition shall go up in the original.

It is further agreed that the plaintiff may file properly certified copies of the maps or plans in the State Land Office referring to the area in controversy in this suit.

57 *Motion for New Trial.*

Filed March 19th, 1909.

Civil District Court, Division "E."

No. 88185.

LOUISIANA NAVIGATION CO., LTD.,
vs.
OYSTER COMMISSION OF LA. et als.

On motion of J. C. & Thos. Gilmore, and E. N. Pugh, Attorneys for Plaintiff, it is ordered by the court that defendant show cause on the — day of March 1909, why a new trial should not be granted plaintiff herein on the grounds the judgment maintaining the exceptions of no cause of action is clearly contrary to the law and the evidence. That the questions, propositions of law and matters at issue were not properly before the Court on the said exceptions last filed; the exception of no cause of action having been previously overruled and the said judgment not set aside; that the said exceptions had not been fixed for trial and the question involved in the trial of said exceptions complained of trenched upon the substantial rights of plaintiff and questions of law belonging to the merits of the case to the grievous injury of plaintiff and disergard of its said rights, that issues of plaintiff's possession as a riparian owner and the actions of trespass and account against the defendants and the Federal question and the question involved in connection therewith were not considered in relation to the case and the said judgment is in error and violative of all Plaintiff's said rights.

58 *Motion for New Trial Overruled and Judgment Signed.*

Extract from the Minutes of Division "E," Friday, March 19th, 1909.

Present: Hon. Geo. H. Theard, Judge.

In this matter the plaintiff through its counsel, having presented to the Court, on this day a motion for a new trial, and the Court considering that the Judgment, heretofore rendered herein shall remain undisturbed for the reasons this day orally assigned:—

It is ordered that leave be granted to the plaintiff to file the motion,

that the said motion be overruled and that the new trial therein prayed for be denied.

The judgment read and rendered in the following case on March 18th, 1909, was signed this day in open Court.

Act of Transfer.

Filed February 27th, 1909.

NEW ORLEANS, *Oct.* 10, 1894.

For valuable consideration I hereby sell, transfer, assign, convey, set over and deliver to the Louisiana Navigation Company, Limited, the land hereinafter described and all my right, title and interest in and to the same as the said land now exists and stands as evidenced by the various titles and patents for the said respective pieces and portions respectively, either, a part or as a whole, viz:—

The following described property, to-wit:—

Certain lands situated in the South Eastern Land District of Louisiana in the Parish of St. Bernard, embracing the whole of the Island known as "Isle au Pitre" and other lands, viz:

First the fractional sections Nos. Twenty three, Twenty four Twenty five and Twenty six in Township No. Ten South of Range Twenty east containing four hundred and sixty eight and 78/100 acres.

59 Second. The fractional section- Thirty three and Thirty four in Township No. Ten South of Range Twenty east containing five hundred and sixty nine and 72/100 acres.

Third. The fractional sections No. Twenty seven Twenty eight and Thirty two in Township No. Ten South of Range No. Twenty East containing Three Hundred and Eighty & 40/100 acres.

Three islands in section- Twenty, Twenty one, Twenty eight and Twenty nine in Township No. Ten South of Range No. Twenty East in South Eastern, East of Riverland District containing Fifty one & 40/100 acres.

The fractional West Half of Fractional West half of Section four and Fractional North East quarter of Section No. Five in Township No. Eleven South of Range No. Twenty East in the South Eastern East of River land District containing Two hundred and Seventy six & 00/100 acres.

The fractional section- five, six, seven eight South West quarter of Section Eighteen North East quarter of North West quarter of Section Nineteen & West half of Section No. Thirty one in Township No. Eleven South Range No. Twenty East in the South Eastern East of River land District containing Nine hundred & ninety acres.

All of fractional section No. Thirteen in Township No. Eleven South Range No. Nineteen East in the South Eastern East of Riverland District, containing Three hundred and Twenty & 00/100 acres.

The East fractional half of North West Fractional quarter of Section No. Four in Township No. Eleven South of Range No. Twenty East in the South Eastern East of River Land District containing Thirty three and 00/100 acres.

The South half of North West quarter of Section five East half of East Half and South west quarter of South East quarter of Section Six North East quarter North half of South East quarter of Section Seven and North West quarter of Section Eight in Township N. Twelve South Range No. Twenty east in the South Eastern East of River land District containing One Thousand and Eight and 00/100 acres.

60 The west half of North East quarter & East half of North West quarter of Section No. Six in Township No. Twelve South Range No. Twenty East in the South Eastern East of River Land District, containing One Hundred and Sixty and 00/100 acres.

All of Section No. Twenty in Township No. Eleven South Range No. Twenty East in the South Eastern East of River Land District, containing Six Hundred and Forty and 00/100 Acres.

The West half of South West quarter Sec. 17 South East quarter Sec. Eighteen East half of Section Nineteen West half of Section Twenty nine East half of Section Thirty, East half of Section Thirty one and West half of Section Thirty two in Township No. Eleven South of Range No. Twenty East in the South Eastern East of River Land District containing One Thousand Eight Hundred and Forty acres.

Together with all the rights of accretion, rights, ways, advantages and appurtenances thereunto belonging or in anywise appertaining.

(Signed) JOSEPH C. GILMORE.

Above transfer accepted for and on behalf *for* the Louisville Navigation Co., Limited.

[SEAL.] (Signed) W. V. GILMORE. *President.*

Duly registered at the Parish of St. Bernard, on the 8th day of February A. D. 1895, in Conveyance Book No. 18, fo. 270, et seq.

[SEAL.] (Signed) JAS. D. ST. ALEXANDRE.
Clerk ex-Officio Recorder.

61 *Motion of Appeal.*

Filed March 22nd, 1909.

Civil District Court, Division "E."

No. 88185.

LOUISIANA NAVIGATION COMPANY, LTD.
vs.
OYSTER COMMISSION OF LOUISIANA and E. C. JOULLIAN CANNING COMPANY et als.

On motion of J. C. & Thomas Gilmore and Edward N. Pugh, Attorneys for plaintiff Louisiana Navigation Company, Limited, and on suggesting to the Court that there is error to plaintiff's prejudice in the final judgment herein rendered on the 18th day of March

1909, and signed on the 19th day of March 1909, maintaining exceptions of no cause of action of defendant and dismissing plaintiff-suit and on showing that mover, the said plaintiff is injured and aggrieved by the said judgment and desires to appeal suspensively from the said judgment to the Supreme Court of Louisiana:

It is ordered by the Court that a suspensive appeal from the said judgment to the Honorable Supreme Court of Louisiana be allowed mover the Louisiana Navigation Company, Limited on furnishing bond with good and solvent surety in the sum of Two Hundred & Fifty Dollars conditioned as the law directs and that the said suspensive appeal be returnable to the Honorable the Supreme Court of Louisiana on the 12th day of April, 1909.

62 *Appeal Bond.*

Filed March 22nd, 1909.

Know all men by these presents That the Louisiana Navigation Company, Limited, as principal and Thomas Griffin, resident of the City of New Orleans, as surety are held and firmly bound unto Thomas Connell, Clerk of the Civil District Court, for the Parish of Orleans, his successors, administrators and assigns in the sum of ($250.) Two Hundred and Fifty Dollars for the payment whereof we bind ourselves, our heirs, executors and administrators, firmly by these presents sealed with our seal, and dated in the City of New Orleans, on the 22nd day of March in the year of our Lord one thousand nine hundred and nine (1909).

Whereas, the above bounden Louisiana Navigation Company, Limited, has this day filed a motion of suspensive appeal from a final judgment rendered against it and in favor of defendants in the suit of Louisiana Navigation Company, Limited, vs. Oyster Commission of Louisiana and E. C. Joullian Canning Company et als., No. 88,185 of the Civil District Court, for the Parish of Orleans, on the 18th day of March 1909, and signed on the 19th day of March 1909.

Now the condition of the above obligation is such, That the above bound Louisiana Navigation Company, Limited, shall prosecute its said suspensive appeal, and shall satisfy whatever judgment may be rendered against it or that the same shall be satisfied by the proceeds of its estate real or personal, if it be cast in the appeal; otherwise that the said Thomas Griffin, surety shall be liable in its place.

Signed, sealed in the presence of

——— ———.

LOUISIANA NAVIGATION COMPANY, LTD.,
(Sgd.) By WILLIAM V. GILMORE, *President.* [SEAL.]
(Signed) THOMAS GRIFFIN. [SEAL.]

63 *Certificate.*

STATE OF LOUISIANA,
Civil District Court for the Parish of Orleans:

I L. W. Gunther, Dy. Clerk of the Civil District Court for the Parish of Orleans, do hereby certify that the foregoing Sixty three (63) pages do contain a true, correct and complete Transcript of all the proceedings had, documents filed and evidence adduced upon the trial of the cause wherein Louisiana Navigation Co., Ltd. is plaintiff, and Oyster Commission of Louisiana et als. are defendants instituted in this Court and now in the records thereof under the No. 88185 of the Docket thereof, Division "E," the Honorable George H. Theard, Judge—Four (4) Maps offered in evidence by Counsel for plaintiff, Two (2) being filed of date February 27, 1909, and annexed to and made part of Supplemental & Amended petition filed February 27, 1909, and the other two (2) thereof being filed of date March 19, 1909. Chart offered in evidence by Counsel for plaintiff filed February 27, 1909, and annexed to and made part of supplemental petition, filed Feb'y 27, 1909, and Volumes I and II, being printed Transcript of the record in the case of State of Louisiana Versus State of Mississippi, No. 11, Original of the Docket of the Supreme Court of the U. S. referred to in supplemental petition in accordance with agreement at page 57 are forwarded as filed.

In testimony whereof, I have hereunto set my hand and affixed the impress of the seal of said Court, at the City of New Orleans, on this Eighth day of April in the year of our Lord, one thousand nine hundred and nine and in the one hundred and thirty third year of the Independence of the United States of America.

[SEAL.] (Signed) L. W. GUNTHER,
Dy. Clerk.

64 *Proceedings Had in the Supreme Court of the State of Louisiana.*

Transcript of Appeal Filed.

No. 17594.

LOUISIANA NAVIGATION COMPANY, LIMITED,
vs.
OYSTER COMMISSION OF LOUISIANA et als.

Filed April 8th, 1909.
(Signed) PAUL E. MORTIMER,
Deputy Clerk.

Motion and Order to Use Original Documents.

Supreme Court of Louisiana.

No. 17594.

LOUISIANA NAVIGATION CO., LTD.,
vs.
OYSTER COMMISSION OF LOUISIANA, E. C. JOULLIAN CANNING COMPANY et al.

On motion of J. C. & Thomas Gilmore and Edward N. Pugh, Attorneys for the Louisiana Navigation Company, Limited, plaintiffs, appellant, and on suggesting to the Court that certain maps and books, viz: four maps and a chart, two volumes of printed record of suit No. — in Supreme Court of United States in suit of State of Louisiana vs. State of Mississippi have been brought up in the original in transcript of appeal and the original patents from State of Louisiana under which plaintiff holds possession, under agreement of counsel, may be referred to either in the original or as contained in the said printed record:

It is ordered by the Court that the said maps, books etc., brought up in the transcript of appeal and the said patents may be
65 taken up with the transcript and produced and referred to in the original on the appeal in this case.

(Endorsed:) No. 17,594. Supreme Court of Louisiana. Louisiana Navigation Company Limited vs. Oyster Commission of Louisiana et al. Motion of Appellant to refer to Maps, Books, Patents etc., in Original. Entered and Filed April 12th, 1909. (Signed) T. McC. Hyman, Clerk.

Order to Use Original Documents.

(Extract from Minutes.)

NEW ORLEANS, MONDAY, *April 12th*, 1909.

The Court was duly opened, pursuant to adjournment.

Present, their Honors Joseph A. Breaux, Chief Justice, and Francis T. Nicholls, Frank A. Monroe, Olivier O. Provosty, and Alfred D. Land, Associate Justices.

No. 17594.

LOUISIANA NAVIGATION COMPANY, LIMITED,
vs.
OYSTER COMMISSION OF LOUISIANA et al.

On motion of J. C. & Thomas Gilmore and Edward N. Pugh, Attorneys for the Louisiana Navigation Company, Limited, plaintiff,

appellant, and on suggesting to the Court that certain maps and books, viz: four maps and a chart, two volumes of printed record of suit No. 11 in Supreme Court of the United States in suit of State of Louisiana vs. State of Mississippi, have been brought up in the original in transcript of appeal and the original patents from the State of Louisiana under which plaintiff holds possession, under agreement of counsel, may be referred to either in the original or as contained in the said printed record; It is ordered by the Court that the said maps, books, etc., brought up in the transcript of appeal and the said patents may be taken up with the transcript and produced and referred to in the original on the appeal in this case.

66 *Motion to Advance Cause.*

No. 17594.

LOUISIANA NAVIGATION COMPANY, LIMITED,
vs.
OYSTER COMMISSION OF LOUISIANA, E. C. JOULLIAN CANNING COMPANY et al.

On motion of counsel for the plaintiff, and on suggesting to the Court that this is a case wherein it is claimed by the defendant Oyster Commission that the State is interested for certain alleged taxes or so called revenue and represented by the said Oyster Commission and that mover is threatened by the said Commission in its pleadings with arrest and forfeiture of its property in the event of operation of its Boats and employees and is subjected to the indignity of the said threats and alleged intention of violating the Criminal laws of the State which the said Oyster Commission claims it is its duty to enforce while said plaintiff is deprived of protection of law in the enjoyment of its property and the said plaintiff is in consequence subjected to the raiding of its property by irresponsible parties notwithstanding the injunction herein and on further suggesting that, if the State of Louisiana is actually interested and occupies the position as alleged in this case, the said case should be specially assigned and advanced on the docket as a State case. And on showing that the next Oyster season will open in October and it is advisable in the public interest that the case be set for trial in order that the interest involved will be advanced by a decision this terms of Court.

It is ordered by the Court that the said cause be assigned for trial on the — day of —— 1909 and the defendants notified.

67 (Endorsed:) Supreme Court. No. 17,594. Louisiana Navigation Co. Limited, vs. Oyster Commission of Louisiana, et al. Motion to advance & assign cause. Presented in open Court and Filed without prejudice May 11, 1909. (Signed) T. McC. Hyman, Clerk.

Objected to by Jno. C. Wickliffe counsel for defendant May 17, 1909.

Motion and Order to Advance.

(Extract from Minutes.)

NEW ORLEANS, TUESDAY, *May 11th*, 1909.

The Court was duly opened, pursuant to adjournment.

Present their Honors: Joseph A. Breaux, Chief Justice; and Francis T. Nicholls, Frank A. Monroe, Olivier O. Provosty and Alfred D. Land, Associate Justices.

No. 17594.

LOUISIANA NAVIGATION COMPANY, LIMITED,
vs.
OYSTER COMMISSION OF LOUISIANA et al.

Joseph C. and Thomas Gilmore and E. N. Pugh, of counsel for the plaintiff and appellant this day presented a motion to advance this cause on the docket for trial. The Court ordered the motion to be filed without prejudice.

Motion and Order to Advance.

Supreme Court of Louisiana.

No. 17594.

LOUISIANA NAVIGATION CO., LTD.,
vs.
OYSTER COMMISSION OF LOUISIANA and E. C. JOULLIAN CANNING COMPANY et al.

On motion of J. C. & Thomas Gilmore and Edward N. Pugh, Attorneys for plaintiff, and on suggesting to the Court that as set forth in the motion heretofore made, but objected to by defendant, this is a case entitled to be placed upon the summary docket and to
68 be fixed by preference or specially assigned in accordance with law and the provisions of Article 879 Code of Practice as a case in which the State is possibly interested, as it appears from the following extracts from the pleadings of defendant that it is claimed by defendant that the collection of certain alleged taxes is delayed or obstructed by legal process or injunction herein; viz: It (defendant) "shows that it derives the following revenues from the oyster business and industry in the territory covered by plaintiff's injunction, etc. making a total of $10,567., all of which is collected during each oyster season which begins about October 15th and ends about April 15th each year."

That the effect of the injunction herein — to prevent appearer from collecting the revenues set out above. That before this case can be heard the oyster season will be over.

"That said injunction prevents appearer from collecting the tax of three cents per barrel whether finished from natural reefs or private bedding grounds or privately owned property (if there be such, which appearer denies).

"That the injunction prevents appearer from enforcing the criminal laws of the State of Louisiana, etc." Extracts from Transcript p. 17, and on suggesting that the petition calls in question the legality or constitutionality of the said taxes and abuse of the said alleged criminal process by which it is illegally attempted by defendant to deprive petitioner of its property and which threaten to deprive petitioner and its employees of personal freedom, and safety. Transcript, p. 6.

It is ordered by the Court that the above numbered and entitled cause be placed upon the Summary Docket as entitled to be fixed for trial by preference or special assignment, and that defendants be notified.

69 (Endorsed:) No. 17,594. Supreme Court of Louisiana. Louisiana Navigation Company, Limited, vs. Oyster Commission of Louisiana and E. C. Joullian Canning Co. et al. Motion for order to place cause on summary Docket. Presented in open Court. May 21, 1909. Entered and Filed May 24, 1909. (Signed) T. McC. Hyman, Clerk.

Motion and Order to Advance.

(Extract from Minutes.)

NEW ORLEANS, MONDAY, *May 24th*, 1909.

The Court was duly opened, pursuant to adjournment.

Present their Honors: Joseph A. Breaux, Chief Justice; and Francis T. Nicholls, Frank A. Monroe, Olivier O. Provosty, and Alfred D. Land, Associate Justices.

No. 17594.

LOUISIANA NAVIGATION COMPANY, LIMITED,
vs.
OYSTER COMMISSION OF LOUISIANA and E. C. JOULLIAN CANNING Co. et al.

On motion of J. C. and Thomas Gilmore, and Edward N. Pugh, of counsel for the plaintiff, and upon suggesting to the Court that this case involves the legality and constitutionality of an Act of the Legislature, and for the reasons assigned at length in the motions on file; It is ordered by the Court that the case be placed upon the summary docket as entitled to be fixed for trial by preference.

Called. Motion and Order to Continue Preference

(Extract from Minutes.)

NEW ORLEANS, TUESDAY, *October 19th*, 1909.

The Court was duly opened, pursuant to adjournment.
Present their Honors: Joseph A. Breaux, Chief Justice; and Francis T. Nicholls, Frank A. Monroe, Olivier O. Provosty, and
70 Alfred D. Land, Associate Justices.

No. 17594.

LOUISIANA NAVIGATION COMPANY, LIMITED,
VS.
OYSTER COMMISSION OF LOUISIANA et als.

This cause coming on this day to be heard, upon the motion of Mr. John C. Wickliffe, Attorney for the defendant and appellee, who suggested to the Court the inability of Mr. J. C. Gilmore, counsel for the plaintiff and appellant, to be present, was ordered by the Court to be continued with preference.

Called & Appearance. Argued and Submitted.

(Extract from Minutes.)

NEW ORLEANS, WEDNESDAY, *January 5th*, 1910.

The Court was duly opened, pursuant to adjournment.
Present their Honors: Joseph A. Breaux, Chief Justice; and Frank A. Monroe, Olivier O. Provosty, and Alfred D. Land, Associate Justices; Absent Francis T. Nicholls, Associate Justice.

No. 17594.

LOUISIANA NAVIGATION COMPANY, LIMITED,
VS.
OYSTER COMMISSION OF LOUISIANA et als.

This cause came on this day to be heard and was argued by counsel: Mr. J. C. Gilmore opened for the plaintiff, appellant; Mr. John Dymond, Jr., pleaded for the Dunbars, Lopez and Dukate Company, and the E. C. Joullian Canning Company, defendants, appellees; Mr. John C. Wickliffe pleaded for the Oyster Commission of Louisiana, defendant, appellee; and E. N. Pugh, representing the plaintiff, appellant, closed the argument. The Court then took the cause under advisement upon the briefs and papers now on file.

71 *Final Judgment.*

(Extract from Minutes.)

NEW ORLEANS, MONDAY, *January 17th*, 1910.

The Court was duly opened, pursuant to adjournment.

Present their Honors: Joseph A. Breaux, Chief Justice; and Francis T. Nicholls, Frank A. Monroe, Olivier O. Provosty, and Alfred D. Land, Associate Justices.

His Honor, Mr. Justice Monroe, pronounced the opinion and judgment of the Court in the following case:—

No. 17594.

LOUISIANA NAVIGATION COMPANY, LIMITED,
vs.
OYSTER COMMISSION OF LOUISIANA et als.

Appeal from the Civil District Court, Parish of Orleans.

It is, therefore, ordered, adjudged and decreed that the judgment appealed from be set aside, and that this case be remanded to the district court, to be there proceeded with in accordance with the views expressed in this opinion, the costs of the appeal to be paid by defendants and those of the district court to await the final judgment.

Opinion of the Court.

72 Mr. Justice Monroe.

No. 17594.

LOUISIANA NAVIGATION CO., LTD.,
vs.
OYSTER COMMISSION OF LOUISIANA et als.

Appeal from the Civil District Court, Parish of Orleans, Theard, J.

MONDAY, *January 17th*, 1910.

Plaintiff, asserting title to, and possession of, certain lands which form part of the low peninsula of the parish of St. Bernard which projects into the waters constituting Mississippi Sound and the Gulf of Mexico, complains that the Oyster Commission of Louisiana and its (alleged) licensees, the E. C. Joullain Canning Company and Dunbars and Lopez and Dukate Company, have been, and are, slandering said title "and possession," trespassing upon the property, carrying away oysters and shells therefrom, and interfering with it (petitioner) in the development and use of the same, and its petition concludes with the prayer that the parties named be cited, and, fur-

ther: "that, the annexed affidavit and bond considered, a preliminary "injunction issue, injoining and restraining" them, "their agents "and employés, and all other parties who may be discovered slander- "ing petitioner's possession or title, or trespassing on petitioner's "property and the said places known as Creole Gap and Grand Pass, "aforesaid, and from interfering with the full enjoyment of the said "property by your petitioner and the employment of the said steam- "boat, Carrie, her officers and crew, and petitioner's employes, and "from attempting to lease, grant, or license, to others, for fisheries "or other purposes, the said places or property, situated within peti- "tioner's survey, as described in petitioner's title. That the said "parties defendant may be ordered to account to petitioner for the "oysters in the shell taken away from said property and that peti- "tioners have judgment for the amount shown to be due petitioner
"by said account. Petitioner further prays that there be
73 "judgment * * * against the said defendants, the Oyster
"Commission of Louisiana and the E. C. Joullian Canning "Company, in solido, for damages, actual and exemplary, for said "joint trespass of the said parties, in the sum of $6000, as above set "forth, and maintaining and making perpetual the preliminary "injunction against said defendants and all others found question- "ing, impeaching and slandering petitioner's possession and title or "trespassing upon petitioner's said property, as described by peti- "tioner's title and patents and the government surveys, and against "all parties, in solido, for costs and general relief."

The preliminary injunction issued as prayed for, on a bond of $2500, and, thereafter, the defendants excepted, on the grounds that the petition was too vague and indefinite in its allegations and that it disclosed no cause of action, and the Oyster Commission further excepted, that "the suit is an attempt, on the part of plaintiff, to stop "and prevent, by the civil process of injunction, the execution and "enforcement of the criminal laws of the state * * * which it is "the duty of this appearer to enforce."

Defendants then moved that the injunction be set aside, or the amount of the bond increased, and plaintiff moved that the motions so filed be taken as answers, and, both motions having been disposed of, adversely to the movers, there was judgment, on the exceptions as follows:

"It is ordered that the said exceptions be maintained in so far as "to order the plaintiff to amend its petition, within five days, by "setting forth, more clearly and definitely, the description of the "property referred to in its petition, and that, upon failure to comply "with this order * * * plaintiff's suit be dismissed, as in case of "non-suit, at its cost; in other respects the said exceptions are over- "ruled."

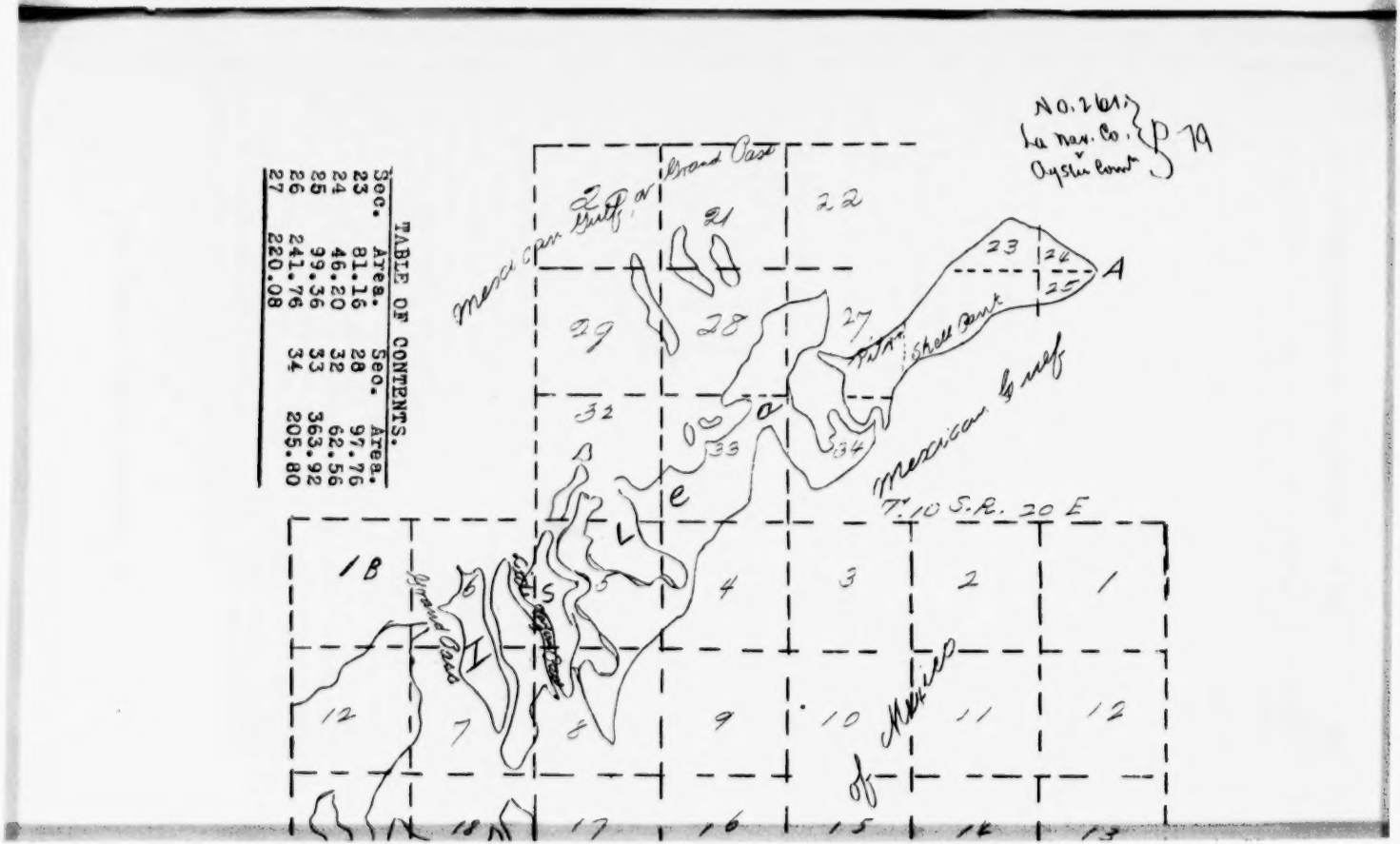
Thereafter, plaintiff filed a supplemental petition, annexing and making part thereof certain patents and other muniments of title, as
in compliance with the order that it should be set forth more
74 clearly and definitely the description of the property referred
to in its petition, and defendants, thereupon, renewed the exception of "no cause of action," which was sustained by a judgment

which rejects plaintiff's demand and dismisses its suit, and, from which plaintiff prosecutes this appeal. The petitions are rather long and we shall, therefore, and in order to determine whether they disclose a cause of action, copy only those parts which purport to describe the property trespassed upon—stating, as well as we can, the substance of the other allegations:

In the original petition, it is alleged: "That petitioner * * * is "the owner and in possession of certain lands, in the parish of St. "Bernard * * *, on the coast line, bounded on the north by the "waters described as the Mississippi Sound, or Grand Pass of the "Gulf of Mexico, all; acquired by petitioner by mesne conveyance "from the State of Louisiana; that the said lands are submerged "and swamp and overflowed lands and embrace the places known as "Creole Gap, in S. 32; T. 10 S; R. 20 E., and Ss. 4 and 5 T. 11 S., "R. 20 E., of the official plat of survey of said lands in the United "States, and State, land offices, and other water bottoms, in the limits "of petitioner's survey, extending across, at the extreme western end "of petitioner's land, to the western section lines of sections 6 and 7, "embracing the place, or small pass, known as Grand Pass, in the "said sections 6 and 7, in T. 11 S.; R. 20 E., as distinguished from "grand Pass of the Gulf of Mexico, aforesaid; the said land extend-"ing southerly, or southwesterly, to a place designated as Drum Pass, "and comprising about 6809 acres."

The petition then goes on to state that the lands in question were donated by the United States to the State, accepted by the State, and sold to petitioner's author as swamp and overflowed lands; "that "petitioner has been in possession, as owner and by title, for more "than 30 years, through the author of its title, and, for more than "ten years, by just title;" that it has gone to great expense in developing the property, and has operated a steamboat, known as the "Carrie," in that connection; that the Oyster Commission of
75 La., and its licensees, the E. C. Joullian Canning Co. and the Dunbars and Lopez and Dukate Co., and other parties, unknown, have slandered its title and have combined to take physical possession of the property; that boats owned by the said parties, or in which they are interested, have taken oysters therefrom, and owe an accounting therefor; that the Dunbars and Lopez and Dukate Co. applied for a lease of said property; that the Oyster Commission, by threats of arrest and imprisonment and criminal prosecution, under color of act 52 of 1904 and Act 178 of 1906, attempt to intimidate petitioner from pursuing the business for which it was organized; that its ownership of the property was notorious and that it placed signs thereon giving further notice to that effect; that the Oyster Commission, its president, agents or employés, on or about Nov. 27, 1908, entered upon said property and cut down and carried away said signs, and ordered its licensee, the Joullian Co. and other parties, to continue fishing and carrying off petitioner's property, and that said company so continues; and that said acts constitute a joint trespass by said parties, for which they are liable, in solido, and which prevents the peaceful occupation, by petitioner, of said land; that said lands are valuable for fisheries or reclamation; but petitioner has paid

all taxes thereon; and, that the use thereof is worth more than $25,000; that said lands and petitioner's business are not subject to the license taxes, restrictions, penalties, prohibitions, forfeitures, etc., imposed by the said acts of 1904 and 1906; that petitioner has been damaged by the acts of the defendants in the sum of $5000, and is entitled to $1000 by way of exemplary damages; and that said acts will be continued unless prohibited by injunction; that the provisions of the acts of 1904 and 1906 do not conflict with petitioner's rights; but, should it be so considered, then, that they contravene sec. 10, of art. 1 of the constitution of the United States, as also certain provisions of the State Constitution (which are specified). Wherefore, petitioner prays &c. (as heretofore set forth). The supplemental petition alleges: "That, in obedience to the order
76 "of the court * * *, plaintiff files herewith a description of "the property of petitioner, as originally derived by its au- "thors from the State of Louisiana and conveyed to, or acquired "by mesne conveyance by, petitioner, and comprising the north east "extremity, or end, of the peninsula of St. Bernard, as outlined and "defined in the "Boundary Case," between the States of Louisiana "and Mississippi, * * *, establishing the boundary between the two "states; that the said part of said peninsula is also known as "Isle "a Pitre," or the "Louisiana Coast Line," the said decision showing "the "thalweg," or boundary, to run between the said Isle a Pitre "and Cat Island. Petitioner shows that its possession embraces the "whole of the territory known as the "Isle a Pitre," and the lands "described in the annexed transfer, made part hereof; that the said "sections and fractional sections of land, or upland, and land under "water, therein set forth, adjoin and form one piece, or block, of "swamp and over flowed land, continuously, or diagonally, in the "sections, or fractional sections, described, through T. 10 S.; R. 20 "E.; T. 11 S.; R. 20 E.; and into T. 12 S.; R. 20 E., and S. 13, in "T. 11 S.; R. 19 E., all, in the South Eastern, East of River, Land "District, Parish of St. Bernard, of which plaintiff holds possession, "as set forth in the said several patents and mesne conveyances, as "will fully be shown on the trial of this case; that petitioner files "herewith a plotted diagram of the whole of said property and a "copy of a map of the State Land Office of the said T. 10 S.; R. 20 E. "* * * showing the said islands and portions of said land in said T. "10 S.; R. 20 E., and the United States Coast Survey chart, No. 190, "issued Nov. 1887, and refers to the several maps or charts contained "in the transcript and report of the decision of the said "Boundary "Case," 202. U. S. p. 1 et seq., showing, in detail, the location of "the places known as Creole Gap, in T. 10 S.; R. 20 E. and T. 11 "S.; R. 20 E., and Grand Pass, in T. 11 S.; R. 20 E., lying within "the limits and area of petitioner's survey, and the said patents, "showing the boundaries of said property and petitioner's posses-
"sion and enjoyment of the said property, together with all
77 "the rights of accretion, advantages and appurtenances there- "unto belonging" etc. "Wherefore, petitioner prays" (as in the original petition). There is annexed to this petition an act, under private signature, of date Oct. 10, 1894, whereby J. C. Gil-


No. 2601
La Nav. Co.
Oyster Lease
P 79
TABLE OF CONTENTS.
Sec. Area. Sec. Area.
23 81.16 28 97.76
24 46.20 32 62.56
25 99.36 33 363.92
26 241.76 34 205.80
27 220.08
Mexican Gulf
Broad Cove
Shell Bank
Mexican Gulf
T. 10 S. R. 20 E.
Broad Cove
Mexico

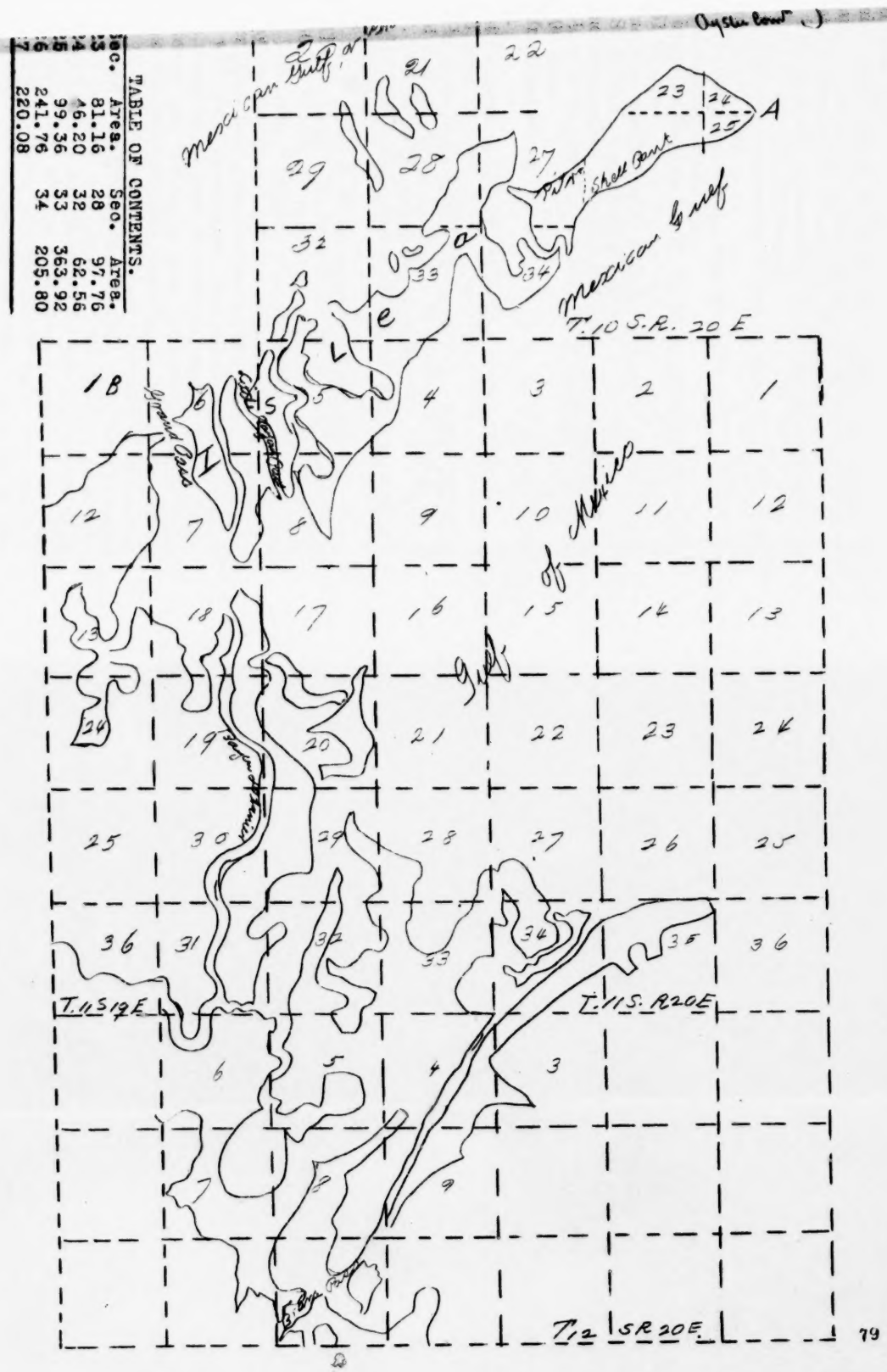


TABLE OF CONTENTS.
Sec. Area. Sec. Area.
13 81.16 28 97.76
14 46.20 32 62.56
15 99.36 33 363.92
16 241.76 34 205.80
17 220.08
Mexican Gulf or
Oyster Bayou
Shell Bank
Mexican Gulf
T. 10 S. R. 20 E
T. 11 S. R. 19 E
T. 11 S. R. 20 E
T. 12 S. R. 20 E
Bayou Cane
Cole Bayou
Bayou Grand Caillou
Bayou Terrebonne
Mexico
of
Gulf
79

more, "for valuable consideration," sells and transfers to the Louisiana Navigation Co., all his right, title and interest in the following described lands, towit:

"Certain lands situated in the South Eastern Land District of "Louisiana, in the parish of St. Bernard, embracing the whole of "the island known as Isle à Pitre, and other lands, viz:"

First. The fractional sections Nos. 23, 24, 25, and 26, in T. 10 S., R. 20 E., containing 468.78 acres.

Second. The fractional sections 33 and 34, in T. 10 S., R. 20 E., containing 569.72 acres.

Third. The fractional sections Nos. 27, 28, and 32, in T. 10 S., R. 20 E., containing 380.40 acres.

Three islands in Sections 20, 21, 28, in T. 10 S., R. 20 E., containing 51.40 acres.

The fractional west half of S. 4, and fractional N. E. ¼ of S. 5, in T. 11 S., R. 20 E., containing 276 acres.

The fractional sections 5, 6, 7, and 8; S. W. ¼ of S. 18; N. E. ¼ of N. W. ¼ of S. 19; and W. ½ of S. 31, in T. 11 S., R. 20, E., containing 990 acres.

All of fractional section No. 13, in T. 11 S., R. 19 E., containing 320 acres.

The east fractional ½ of N. W. ¼ of S. 4; T. 11 S. R. 20 E., containing 33 acres.

The S. ½ of N. W. ¼ of S. 5; E. ½ of E. ½, and S. W. ¼ of S. E. ¼ of S. 6; N. E. ¼; N. ½ of S. E. ¼ of S. 7; N. W. ¼ of S. 8; in T. 12 S. R. 20 E., containing 1008 acres.

The W. ½ of the N. E. ¼ and E. ½ of S. 6; T. 12 S.; R. 20 E., containing 160 acres.

All of S. 20, T. 11 S., R. 20 E., containing 640 acres.

The W. ½ of S. W. ¼ of S. 19; W. ½ of S. 29; E. ½ of
78 S. 30; E. ½ of S. 31; and W. ½ of S. 32; T. 11 S., R. 20 E., containing 1840 acre- "Together with all the rights of accretion, "rights, ways, advantage and appurtenances thereto belonging" etc.

The descriptions thus given (in the act of transfer in question) are taken, with some inaccuracies, from patents, also annexed to the petition, issued by the State of Louisiana, most of them, to plaintiff's transferrer, but, several, to other persons, and all of them reading, that the lands are sold "according to the official plat of "the survey of the said lands in the State land office." The survey referred to seems to have been made in 1845, and, from the copies which plaintiff has filed, aided by an unofficial plat of later date, also filed by plaintiff, we have prepared the subjoined sketch, upon a reduced scale, which, with no pretentions to absolute accuracy, may be of some assistance. On the official copy, from which it was, mainly, taken, the section and township lines, so far as they go, are all dotted, and some of them, including those which traverse the extreme point of land, at the top of the sketch,

(Here follows diagram marked p. 79.)

80 are in red ink (indicating as we understand it, that they are not to be found on the original). "Creole Pass," (by that name) does not appear on any of the plats, but the name "Little Bayou Pere," is given, on the unofficial sketch, to a bayou extending across the line between townships 10 and 11, and, as Creole Pass is described, in the supplemental petition, as being in these townships, it may be that "Little Bayou Pere" is another name for it. We find that, on one of the plats incorporated in the transcript of the record in the case of the State of Louisiana vs. State of Mississippi (which we are invited to consider), the whole of the land, extending (according to the annexed sketch) between the points which we have designated as A and B, respectively, is called Isle a Pitre, and, in some of the plats in the same transcript, the body of water lying to the northward of Isle a Pitre is called Mississippi Sound.

Opinion.

The position of the plaintiff, as developed in the argument of the case, is, that its patents to fractional sections carry with them title to all the land in the sections, submerged as well as dry, and (from the argument) we understand its particular complaint to be, that the Oyster Commission, and its licensees, have been, and are, interfering with its use and enjoyment of the submerged portions of the sections in question (especially those lying beneath the waters of Creole Pass and Grand Pass) by removing oysters therefrom and by threatening it (plaintiff) with the penalties of the law, for dealing with those lands as its own.

Counsel for the Oyster Commission relies upon two grounds in support of his exception (of no cause of action). He says, in his brief: "The first ground is, that, this being a suit to test the title "of lands claimed both by the plaintiff and the State, the Oyster "Commission, being merely a department of the State government, "charged with certain functions, can not stand in judgment, in a "suit concerning the title; that, belonging to the State; and the State, "therefore, is the only party who could try this question with the "plaintiff." The other ground (relied on by all the defend-
81 ants) is, that the submerged lands are not included in plaintiff's patents and that, having exhibited those muniments of title, as part of its allegation of possession, as owner, plaintiff has put itself out of court.

Considering the ground first stated, it would hardly do to say that, because an alleged trespasser is without capacity to stand in judgment with respect to the title to the property trespassed on, the party claiming to be in possession, as owner, has no standing to protect such possession.

What the court decided in the "Chauvin" case was, that, the plaintiff, having injoined the Oyster Commission from trespassing upon, and interfering with, his enjoyment of lands claimed by him, and having exhibited a patent from the State which embraced the lands so claimed, the Oyster Commission had no standing to

attack the title so exhibited. Chauvin vs. Oyster Commission, 121 La. 10.

The other ground relied on presents the question, whether the patents exhibited by the plaintiff now before the court conveyed the property which plaintiff is seeking to protect, or whether that property is part of the public domain, the administration of which is vested in the Oyster Commission. For the support of their view of this question, counsel for plaintiff cite decisions of the Supreme Court of the United States, of the Supreme Courts of Indiana and Michigan and of the English Courts, all, interpreting and applying the common law, as administered in England, and, possibly, as administered in some of the States mentioned, and all dealing with cases essentially different from that here presented. According to the Common law, of England, there is no navigable water save that which is within the ebb and flow of the tide, and a grant of land bordering upon a non-navigable stream, carriers the title to the middle thread of the stream. In this country, however, all streams are navigable, in the legal sense, which are navigable in fact, and, by the concurrence of all authority, grants of land bordering upon navigable streams, or tide water, carry the titles no further than high water mark. This question was considered in the case
82 of Packer vs. Bird, 137 U. S., 661, in which Mr. Justice Field, as the organ of the Supreme Court of the United States, said: "It is undoubtedly the rule of the common law that the "title of owners of land bordering upon rivers above the ebb and "flow of the tide extends to the middle of the stream, but, that, "where the waters of the river are affected by the tides, the title of "such owners is limited to ordinary high water mark * * *. In "England, this limitation of the right of the riparian owner is con-"fined to such navigable rivers as are affected by the tides, because, "there, the ebb and flow of the tide constitute the usual test for the "navigability of the stream. * * * In this country, the situ-"ation is wholly different. Some of our rivers are navigable for "many hundreds of miles above the limits of tide water, and, by "vessels larger than any which sailed upon the seas when the com-"mon law rule was established. A different test must, therefore, be "sought to determine the navigability of our rivers, with the conse-"quent rights both of the public and the riparian owner, and such "test is found in their navigable capacity. Those rivers are re-"garded as public, navigable, rivers which are navigable in fact, "and, as said in "The Daniel Bell," 77 U. S. 10 Wall) 557 (Law "Ed. 19-999), they are navigable in fact when they are used, or "are susceptible of being used, in their ordinary condition, as high-"ways for commerce over which trade and travel are, or may be, "conducted, in the customary modes of trade and travel on water."

Quoting from another case, the learned Justice proceeds: "We are "aware that, by the common law, of England, such streams as the "Mississippi; the Missouri; the rivers Amazon and Platte; the "Rhine; the Danube; the Ganges; the Nile; and the Indus were "not navigable rivers, but, were the subject of private property, "whilst an insignificant creek, in a small island, was elevated to the

" dignity of a public river, because it was so near the ocean that the " tide ebbed and flowed the whole of its petty course. The Roman " law, which has pervaded Continental Europe, and which took its " rise in a country where there was a tideless sea, recognized all
" rivers as navigable which were really so, and this common
83 " sense view was adopted by the early founders of Pennsyl-
" vania, whose province was intersected by large and val- " uable streams some of which are a mile wide." And the question at issue (whether a grant of land, described as bordering on the Sacremento river, carried the title to the middle of the stream and included an island) was decided in the negative. The learned counsel quote freely from the opinion of the court in the case of Hardin vs. Jordan, 140 U. S. 406, in which the main question was, whether United States patents to certain fractional sections of land, lying upon the borders of a small fresh water lake, or pond, in Illinois, carried the titles to the middle of the lake. It was held (three of the Justices dissenting) that they did, but Mr. Justice Bradley, as the organ of the Court, in the course of the opinion handed down by him said: "This is an action * * * to recover possession of " certain fractional sections of land lying on the west and south " sides of a small lake, in Cook county, Illinois, situated about a " dozen miles south from Chicago and two or three miles from Lake " Michigan, and, also, to recover the land, under water, in front of " said fractional sections, and land from which the water retires at " low water. The lake is two or three miles in extent and the main " question in the cause is, whether the title of the riparian owner, " on such a lake, extends to the center of the lake, or stops at the " water's edge." Proceeding to consider the question thus stated, the Court found that the survey upon which the patents issued, "not " only laid down meander lines, next to the lake, but also described " said lines as running along the margin of the lake"; that the plat of survey exhibited the granted tracts as actually bordering upon the lake, which, though marked with the words "Navigable Lake," was, in fact, but a non-navigable, fresh water, pond; and, that the grant was made according to said plat; and the opinion proceeds:

" Such being the form of the title granted * * *, the ques- " tion is as to the effect of that title, in reference to the lake front " of the lands actually described in the grant. This question must " be decided by some rule of law, and no rule of law can be resorted
" to for the purpose except the local law of the State of Illi-
84 " nois." The learned Justice then finds that "the common
" law is the true and only law of Illinois on the subject of " land titles;" that, at common law, the question, what will pass by a grant bounded by a stream of water, depended upon the character of the stream, or water. "If it were a navigable stream, or " water, the riparian proprietor extended only to high water mark. " If it were a stream not navigable the rights of the riparian pro- " prietor extended to the center of the thread of the current " * * *. At common law, only arms of the sea and streams where " the tide ebbs and flows are deemed navigable. To those, riparian

"proprietors, bounded on, or by, the river, could acquire exclusive "ownership in the soil, water and fishery, to the middle thread of "the current, subject, however, to the public easement of naviga- "tion." It was, then, held that the same, common law, rule applied to fresh water lakes and ponds. Differentiating such cases, however, from those where the grant is of land on navigable, or tide, water, the opinion reads, "With regard to grants of the government for "lands bordering upon tide water, it has been distinctly settled that "they only extend to high water mark and that the title to the "shore, and land under water, in front of lands so granted, inures "to the State within which they are situated, if a state has been "organized and established there. Such title to the shore and lands "under water is regarded as incidental to the sovereignty of the "State, and can not be retained or granted out to individuals by "the United States * * *. Such title being in the State, the "lands are subject to the State regulation and control, under the "condition, however, of not interfering with the regulations which "may be made by Congress with regard to public navigation and "commerce. The State may even dispose of the usufruct of such "lands, as is frequently done, by leasing oyster beds in them and "granting fisheries in particular localities; also, by the reclamation "of submerged flats and the creation of wharves and piers and "other adventitious aids to commerce."

By the express terms of the act of Congress by which Louisiana was admitted to the Union, the Mississippi river and the navigable rivers leading into the same and into the Gulf of Mexico
85 were declared to be common highways, to be kept forever free to the inhabitants of the state and of other states and territories of the United States (Stat. at large, Vol. 2, pp. 642, 703; Boyken vs. Shaffer, 13 A. 130); and, the Civil Code provides that: "Public things are those the property of which is vested in the "whole nation, and the use of which is allowed to all members of "the nation; of this kind are navigable rivers * * *, and the "beds of rivers so long as the same are covered with water." C. C. 453.

Hence, there can be no such thing, in this state, as private ownership of the bed of a navigable river, and, a fortiori, can there be no such thing as private ownership of the bed of the sea or of an arm of the sea. In a case decided many years ago, this Court (referring to certain land lying beneath the waters of Lake Pon-chartrain and claimed by the plaintiff) said: "It appears to us that the testimony shows, fully, the ground in question lies much below high water mark and forms part of the bed of the lake, and is not, therefore, susceptible to private ownership." Milne vs. Girodeau, 12 La. 325.

And, to the same effect, was the decision in Zeller vs. Yacht Club, 34 A. 837. It has, moreover, been held by this Court that the sale, at a fixed price, per acre, of fractional sections of swamp or overflowed land, bordering upon shallow, non-navigable, lakes, entitles the purchaser to the number of acres that he buys, and pays for, and conveys no right to the submerged land, not thus accounted

for. McDade vs. Bossier Levee Board, 109 La. 625; Hall vs. Board etc. 111 L. 913.

We conclude, then, that, the grants under which plaintiff claims—being of land bordering upon, and partially surrounded by, the tide water of the Gulf of Mexico—carry its titles no farther than high water mark, and that, in so far as it (plaintiff) asserts ownership and possession, under such titles, of land lying beneath the waters which surround the tracts of dry land included in said grants, or, lying beneath any navigable passes, or channels, which intersect such tracts or separate them from each other, the exception, of no cause of action, was properly maintained. It does not follow, however, that the petition, taken as a whole, fails to disclose a
86 cause of action, since, its allegations are broad enough to import a charge of trespass with respect to the dry, as well as the submerged, land, and, though the charge is not as specific as the defendants have a right to require, and the trial judge to order, it can not, properly, be said that it does not show a cause of action. Moreover, it seems not unlikely that there may be non-navigable streams, pools, ponds and wet places, so insignificant in dimensions and so within the borders of the dry land covered by plaintiff's grants as that plaintiff would be entitled to hold them, as included therein, (See Burns vs. Crescent etc. Club, 116 La. 1038), and, yet, with respect to which, defendants may entertain a different opinion and may hereafter insist that the judgment appealed from constitutes res judicata.

We think, therefore, that plaintiff should be again afforded an opportunity to amend its petition (within a delay to be fixed by the judge a quo), by setting forth, specifically, the particular places, or portions of its property, upon which the alleged trespass has been committed, together with the time and manner of the trespass.

As the case is presented, the location of Creole Pass is a matter of guess work, and we are not informed, even by an allegation, whether either of the passes mentioned in the petition is navigable or otherwise. It is, therefore, ordered, adjudged and decreed that the judgment appealed from be set aside, and that this case be remanded to the district court, to be there proceeded with in accordance with the views expressed in this opinion, the costs of the appeal to be paid by defendants and those of the district court to await the final judgment.

Syllabus.

1. The fact that the defendant, injoined from trespassing upon property claimed by plaintiff, as owner in possession, has no capacity to stand in judgment with respect to the title, is not a sufficient reason for denying plaintiff the protection sought.

2. A petition which alleges ownership and possession of certain tracts of land, said to form part of the peninsula of the pari-sh
87 of St. Bernard which projects into the waters of the Gulf of Mexico, and, to which, are annexed, as muniments of the title set up, patents from the State, showing that such tracts were

acquired as containing a stated number of acres, subject to tidal overflow, and (under the law), at a fixed price per acre, discloses no cause of action, in so far as it alleges trespass upon the portions of the sections mentioned in the patents (not included in the acreage) which lie beneath the waters of the Gulf, or, beneath the waters of any navigable channel or pass by which the tracts may be intersected or separated, since a grant of land bordering on tide water does not carry the title beyond high water mark, and the bed of the sea is not susceptible of private ownership. But, where the allegations include a charge of trespass upon the dry land conveyed by the grant, or, upon non-navigable streams, ponds, pools and wet places, within the borders thereof, a judgment rejecting the demand, upon an exception of no cause of action, is too broad in its, possible, application, and will be set aside.

88 PROVOSTY, J., dissents, and holds that the case ought to be tried on the merits, and the plaintiff be allowed all those parts which have been patented to the State, by the U. S. Gov. and by the State to plaintiff, as land.

89 *Petition for Rehearing.*

Supreme Court of Louisiana.

No. 17594.

LOUISIANA NAVIGATION COMPANY, LTD.,
vs.
OYSTER COMMISSION OF LOUISIANA, E. C. JOULLIAN CANNING COMPANY et al.

To the Honorable the Supreme Court of Louisiana:

The petition of the Louisiana Navigation Company, Limited, plaintiff, Appellant, respectfully asks for a rehearing of the judgment and decree in the above entitled cause and among other reasons and grounds on which the rehearing is prayed for and points and authorities on which the party founds his application states the following grounds as hereinafter later set forth.

Additional time for elaborating the argument on such points and authorities is also asked for the reasons that the record is voluminous and the material interests of plaintiff are involved and sacrificed by the decree.

1. That the opinion withdraws the protection of law from petitioner's property in substance to which as alleged in the petition the said property is entitled.

2. That the judgment already rendered disposes finally of the cause as to the paramount issue and interest of plaintiff, the sanctity of possession and ownership under State patents and, if allowed to become final, will unlawfully conclude plaintiff as to its possession and title and work irreparable injury to plaintiff and a possible

denial of justice as complained of by plaintiff in respect to the judgment appealed from maintaining the exception of no cause of action.

3. That the effect of the decision is to deprive plaintiff of actual interest in the case and in the further proceeding and trial
90 of the said cause in the lower Court and to make the plaintiff's situation more onerous than it could be made by a final judgment overruling the said exception beyond which the decree could not actually provide in advance of trial of the case.

That the defendants construe the decision as final as will appear from the report in the public press of official proceedings of the said body. That in consequence our lands are now being overrun by parties in violation of the injunction, all of which under the circumstances has a tendency to prejudice the plaintiff's title.

4. That the decree remanding the case could not extend beyond the overruling of the exception of no cause of action. That the said exception of no cause of action or demurrer could not be divided and sustained in part and in part overruled, but must stand overruled in its entirety without affecting the validity of the patents of plaintiff as a unit or whole. That the land laws of the United States (U. S. Revised Statutes Sec. 2476, p. 456,) provide that:

"All navigable rivers, within the territory occupied by the public lands, shall remain and be deemed public highways; and in all cases where the opposite banks of any streams not navigable belong to different persons, the stream and the bed thereof shall become common to both." U. S. Revised Statutes Sec. 2476., p. 456.

This provision is taken notice of by the Oyster Act Sec. 2, Act No. 106 of 1886, p. 195. That the question of navigability could not be interjected into the case where the same is not in issue.

5. That there could not be at one time two exceptions of no cause of action—one overruled and the other sustained, but exceptions must be kept separate. That "the petition if this could be done would not be open to the exception of no cause of action."
91 State vs. Hackley, Hume & Joyce, Provosty, J. On Rehearing, 124 La. 776, Vol. 50 So. Reporter, Pamphlet No. 25, January 22nd, 1910.

6. That under the circumstances the judgment is not responsive to the pleadings and could not be rendered on an exception of no cause of action.

7. That the Court could not judicially go into the construction of State patents on its own initiative to deprive petitioner of its boundaries called for by the patents as issued by the State and without opportunity to petitioner to be heard. That the State is concluded by its own patents, and the Court is without jurisdiction to ignore or set aside the patents in any particular in this proceeding.

8. That the State is a party to plaintiff's title and the Court could not judicially go into a construction and adjudication as to the possession and ownership of plaintiff under its titles in a controversy in which the said titles could not be attacked collaterally.

9. The Court on this exception of no cause of action could not raise the question of water on the land which would be irrelevant on

exception of no cause of action to the issue in a purely possessory action.

10. The judgment is in error in going into the question of title in an action purely possessory and when possession and ownership are fortified by the Government and State patents and the kinds of prescription specially urged in the petition, for injunction. Gray vs. Coco 113 La. 33 (map case) Burke vs. Wall., 29 A. 42. (map case); Yale vs. Duffel, 41 A. 516; Louisiana Navigation & Railway Co. vs. Xavier Realty Co., 115 La. 327.

11. That the sales by the State Government by subdivisions as required by the Sections 2354; 2355, p. 434; 2395; 2396 p. 431-2; 2476 p. 456. U. S. Revised Statutes and the State laws in furtherance thereof took no account of water spaces enclosed within
92 the subdivisions which it was the established practice of the Government to include as aforesaid in sales to citizens and no one has an interest to dispute the patents as importing the area in question. That the said patents are good against the world. That the possession and ownership of a tract of land is of such a nature and subject to such conditions of integrity of the area described in the subdivisions of the survey into Townships, fractional Townships, Sections, and fractional Sections that the proprietor would never have acquired or purchased the patents aforesaid had it not been entitled to the possession as owner it claims.

12. That the construction of the Court creates an absolute *vel-hibitory* defect in title and renders the property unfit for the exercise of private ownership in any part. That it is not possible to distinguish the land as held by the views of the Court for any purpose or possession susceptible of private ownership or other than as alleged sea shore or locus publicus not subject to private ownership.

13. That in the cases cited above and in plaintiff's brief the said land has been declared to be alluvial territory not sea shore or the high seas and is so recognized in the opinion herein as to the interior thereof, in attempting to segregate it into fragments or pieces.

14. That the Government surveys on which plaintiff's title is founded control and plaintiff could not depart from the same if it would. That "Creole Gap" is set forth in the petitions and Sections on the surveys and by name on the chart and the charts in the "Boundary Case" transcript. That it is erroneously called "Creole Pass" in the opinion. That the same and "Grand Pass" are within the area of plaintiff's possession and ownership as defined by the patents exhibited and are simply extensions of the water over
93 plaintiff's land or peninsula subject to petitioner's legal possession and ownership of the bottom. The said names are not material as the said places were not always known by said names.

15. That lands of this description have been declared subject to sale and entry as alluvial swamp and overflowed lands forming the Delta of the Mississippi River and the subject is res judicata. See cases of Morgan v. Nagodich, 40 A. 246; Board of Commissioners Buras Levee District vs. Mialegvich, 52 A. 1292.

16. That there is no question of exclusion of navigation or fishing

attempted by plaintiff; that the peninsula of St. Bernard is not intersected by overflows or Bayous navigable in the sense of the requirements of the Acts of Congress or State legislation, the same being shallows or erosions, crevasses or artificial cuts shoaling at the other end, subject to reclamation, where the original paramount proprietor or owner and the subsequent buyer by title of private property has ever been indivested of the possession or enjoyment of the bottom or water thereon as appurtenant to the possession and enjoyment of the title to the land. That this Court has so regarded the country in the case of Burns vs. Crescent Gun & Rod Club, 116 La. 1038, which was an attempt to obstruct navigation.

17. That the error made by the Court in its original opinion in the case of State vs. Hackley, Hume & Joyce 124 La. 772; Pamphlet No. 25 So. Rep., Jan. 22, 1910, which was corrected on rehearing and the former judgment of the Court set aside appears to have been made in this case, in which there is no question of alleged possession in bad faith. That the whole of the said Marsh or land was overflowed in the last equinoctional storms to a depth of ten feet or more, but the water receded as usual, so as not to deprive the said peninsula as a whole of its private proprietorship or leave any channel in a sense navigable as described by the United
94 State- Supreme Court in Leovy vs. United States, 177 U. S. 621 as to Red Pass or "The Jump" on the Mississippi River closed as to the inside and there is no interference with any possible use for navigation of these waters.

18. That petitioner begs the indulgence of the Court in setting out here in detail the nature of the lands or territory in dispute in order to show its utter worthlessness to petitioner or insusceptibility to private ownership as proposed by the Acts of Congress under the views or directions of the opinion.

19. That under the circumstances set out in the opinion petitioner's case might show no cause of action as held by the lower Court, but petitioner contends that it suffered a denial of justice under this ruling in the lower Court and a sacrifice of its material interest and is injured thereby irreparably and will be so injured and all its investments and outlay incidental thereto lost should the decree remain as it stands and plaintiff be remanded to the lower Court under the views in accordance with which the decree is made. That the said views are not relevant to the decree, but can not be said to be obiter dicta in a controversy between the parties. That plaintiff would suffer said denial of justice to accept the intended protection kindly proffered by this Court on the lines laid down in the opinion, that plaintiff be again permitted to amend its petition as plaintiff is morally and conscientiously satisfied that it is incapable of amending on the lines proposed. That it would not have the interest nor pecuniary resources after purchase of the property by the Government survey to find or allege the facts required by the said views or the opportunities or physical facilities necessary to obtain the information necessary in that connection. That its attempt to carry out the said views would lead to vexatious litigation

and multifariousness which petitioner ought not to be ex-
95 posed to or compelled to incur or undertake.

20. Petitioner is under a sense of its obligation to the Court for protection from the trespass complained of from defendants' acts when the Court extends petitioner's right to pray for relief under the conditions imposed and ordered to be observed in filing another amended petition, but it shows it is unable to do so or comply literally with said order to assert its possession or ownership which would lead to innumerable disputes or multifariousness. That petitioner acquires from the Government and the Government in its dual character State and Federal can take away but it can not impose upon petitioner an alternative which petitioner is unable to fulfil or undertake to divide the land in the portions to which the opinion has reference. That it can not divide dismember or tear asunder its own title into fragments or fractional parts except by a final partition or judgment as to the said parties.

21. That the opinion and decree have failed to consider as set forth in the petition and argument and briefs that the Act of 1886 of Oyster Acts, Sec. 2, recognized or accorded the exclusive right to the owner of lands on both sides of any river, inlet, stream, bayou, etc., to the exclusive right to use of the same for planting oysters, etc., and that the question of navigability vel non where there is no obstruction actual or intended or interference with navigation is not relevant to the said issue nor to any issue in this case. That the present Oyster Act of 1906, Sec. 10, prohibits interference with private claims, patents, or title, and the Oyster Commission is prohibited by the said Act from leasing or interfering with any water bottoms "claimed under some title by any person; and no lease of any bottom which may be so claimed by a private individual, firm,
or corporation shall be valid or have any effect until there
96 shall have been an adjudication by a Court of competent jurisdiction between the State and claimant as to the validity of the title of the property to be leased." Act No. 178 of 1906, pp. 323, 324, Sec. 10.

That Art. 509 C. C. recognizes the use of bottoms whether navigable or not.

22. That the places known as "Creole Gap" and (smaller) "Grand Pass" are described and located in the testimony adduced in the transcript in the Boundary Case" and set out in the petition and supplemental and amended petition and patents, etc., etc. The acknowledgment of counsel for the Oyster Commission in oral argument before the Court that he did the cutting of plaintiff's signs, etc., etc., etc., ought to be considered as ample proof of knowledge on the part of the defendants of the locations in question and of the facts of the trespass set out in the petition.

That the alleged claims of public ownership or interest herein are a distinct cloud upon plaintiff's title and petitioner does not wish to hold anything subject to such imputation of public ownership whether false or otherwise. That the said imputation or slander of title is avowed by defendants.

Petitioner shows that in view of the questions of alleged public

ownership or insusceptibility of the overflowed land and water in question to private ownership or possession and other questions being considered as well as the total sacrifice of material interests of plaintiff's investment which has been made in good faith in connection with acquiring the titles and patents in question, that petitioner be granted a rehearing and petitioner respectfully prays that a rehearing be allowed and additional time for elaborating the argument and filing printed brief be granted, and as in duty bound petitioner will ever pray.

(Signed) EDWARD N. PUGH,
(Signed) J. C. & THOMAS GILMORE,
Att'ys for Petitioner.

97 (Endorsed:) No. 17594. Supreme Court of Louisiana. Louisiana Navigation Company, Limited, vs. Oyster Commission of Louisiana, E. C. Joullian Canning Company et al. Petition for Rehearing. Statement of points and authorities, etc. Filed Jan'y 31, 1910. (Signed) Paul E. Mortimer, Clerk.

Rehearing Refused.

(Extract from Minutes.)

NEW ORLEANS, MONDAY, *March 14th*, 1910.

The Court was duly opened, pursuant to adjournment.

Present: Their Honors, Joseph A. Breaux, Chief Justice, and Francis T. Nicholls, Frank A. Monroe, Olivier O. Provosty, and Alfred D. Land, Associate Justices.

By the Court.

No. 17594.

LOUISIANA NAVIGATION COMPANY, LIMITED,
vs.
OYSTER COMMISSION OF LOUISIANA et als.

It is ordered that the rehearing applied for in this case be refused.

98 Supreme Court of Louisiana.

No. 17594.

LOUISIANA NAVIGATION COMPANY, LIMITED,
vs.
OYSTER COMMISSION OF LOUISIANA, E. C. JOULLIAN CANNING COMPANY, and DUNBAR, LOPEZ AND DUKATE COMPANY.

To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of Louisiana, or to the Honorable the Chief Justice and Associate Justices of the Supreme Court of the United States:

The petition or complaint of the Louisiana Navigation Company, Limited, Plaintiff, by its President, respectfully represents:

That a final judgment was rendered on the 17th January 1910 in the above entitled cause wherein petitioner is plaintiff and the said above named parties the Oyster Commission of Louisiana, the E. C. Joullian Canning Company, and Dunbar Lopez and Dukate Company are defendants.

That a rehearing of the said judgment applied for by petition was refused on the 14th March 1910.

That the Federal question is fully set out and presented in the said case as will appear from the petition and pleadings and proceedings and decree and assignment of errors herewith and final judgment or decree of the said Supreme Court of the State of Louisiana which Court is the highest Court in the State in which a decision in the suit could be had.

That the said judgment contains manifest error to petitioner's prejudice and if carried into effect and execution will occasion petitioner irreparable injury and irretrievable loss and petitioner is aggrieved thereby and will be deprived of rights secured him by the Constitution and laws of the United States and the particular provisions thereof referred to herein and in the assignment of errors made part of this petition. That plaintiff's rights are finally

99 disposed of by the said judgment.

That the said final judgment or decree may be re-examined or reversed or affirmed in the Supreme Court of the United States upon a writ of error in the said suit in the highest Court of the State as aforesaid wherein is set up in the petition and record and is drawn in question as in this case the validity of a statute or authority exercised under the United States and the decision is against their validity and where is drawn in question the validity of a statute of the State or authority exercised under the State on the ground of being repugnant to the Constitution or laws of the United States and the decision is in favor of such their validity or where any title, right, privilege or immunity is claimed under the Constitution, statute or commission held under the United States and the decision is against the title, right, privilege or exemption or immunity specially set up or claimed by the party plaintiff herein under such Constitution, Statute commission or authority. And the Supreme Court of the United States may reverse, modify, etc., said judgment and at their discretion proceed to a final decision of the case and award execution or remand the same to the Court from which it was so removed.

That the plaintiff claims protection of its titles under the articles of the Constitution of the United States referred to in its petition; that defendants claim authority of the acts of the legislature of Louisiana (Act No. 52 of 1904 and amendatory Act No. 178 of 1906 and previous "oyster acts") and the titles, rights, privileges, immunities, etc., of plaintiff proceed originally from patents granted by the State for swamp and overflowed lands donated to the State by Acts of Congress, and protected by or reserved from the operation of the said oyster acts.

That the said final judgment of the Supreme Court of Louisiana deprives petitioner of the rights of a citizen of the United States

and the State of Louisiana to pursue a peaceful pursuit and own property and enjoy personal liberty and life free from unwarrantable seizure and arrest and takes petitioner's property without due process of law and divests vested rights and impairs the obli-
100 gations of a contract in respect to its titles to its said lands, in violation of Article XIV, Section 1, paragraph 1 of the Amendments of the Constitution of the United States; Article 1, Section 10, paragraph 1 of the Constitution of the United States; and Article V of Amendments of the Constitution of the United States.

That the said cause is removable to the United States Supreme Court by writ of error and that a writ of error lies to the said Supreme Court of Louisiana wherein the record is lodged of the said judgment, from the Supreme Court of the United States.

Wherefore petitioner prays that a writ of error from the Supreme Court of the United States to the Supreme Court of Louisiana and to operate as a supersedeas be allowed petitioner on furnishing bond with good and solvent surety in an amount to be fixed by the Chief Justice of the Supreme Court of Louisiana to the end that the errors complained of may be corrected and speedy justice done between the parties; and that the transcript of the record, proceedings, and papers in said cause, duly authenticated may be sent to the said Supreme Court of the United States. Petitioner further prays for citation in error and that the parties defendant in said writ, the Oyster Commission of Louisiana; E. C. Joullian Canning Company; and Dunbars, Lopez and Dukate Company through their respective proper officers may be cited, and petitioner prays for all such further orders and decrees as in law and equity they are entitled and for costs, and petitioner will ever pray.

(Signed) LOUISIANA NAVIGATION COMPANY, LIMITED,
By WILLIAM V. GILMORE,
President.

(Signed) J. C. GILMORE,
(Signed) THOMAS GILMORE,
(Signed) EDWARD N. PUGH,
Attorneys for Plaintiff.

(Endorsed:) No. 17594, Supreme Court of Louisiana—Louisiana Navigation Company, Limited vs. Oyster Commission of Louisiana, E. C. Joullian Canning Company, and Dunbars, Lopez and Dukate Company—Petition for Writ of Error from U. S. Supreme Court to Supreme Court of Louisiana—Edward N. Pugh, J. C. Gilmore, Thomas Gilmore, Att'ys for Plaintiff.—Filed March 24th, 1910.—Paul E. Mortimer, Clerk.

101 *Order Granting Writ.*

"Order.

Granted without supersedeas upon the plaintiff furnishing bond in the sum of one thousand dollars.

New Orleans, March 24th, 1910.

(Signed) JOS. A. BREAUX,
Chief Justice of the Supreme Court of the State of Louisiana."

Assignment of Errors.

Supreme Court of Louisiana.

No. 17594.

LOUISIANA NAVIGATION COMPANY, LIMITED,
vs.
OYSTER COMMISSION OF LOUISIANA, E. C. JOULLIAN CANNING COMPANY, and DUNBAR, LOPEZ AND DUKATE COMPANY.

To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Assignment of Errors.

Statement of Case.

This is an action by plaintiff to be quited in possession and enjoyment of ownership of certain marsh or swamp and overflowed lands subject to tidal overflow situated on the Mississippi Sound, Parish of St. Bernard, State of Louisiana.

The suit is for injunction against the defendants as trespassers upon plaintiff's said swamp and overflowed lands and illegally taking cargoes of oysters from petitioner's property and committing acts of depredation and tre-pass and damages are prayed and an accounting for property taken away.

102 The plaintiff's suit was dismissed on demurrer or exception of no cause of action and motion to dissolve injunction and the demurrer is sustained by the Supreme Court of Louisiana on appeal except as to inconsiderable spaces if there be any as to which plaintiff's title could take effect, as to which plaintiff is unable and it would not be possible under the rulings of the decree to say and plaintiff is allowed alternative to again amend its petition or have its suit dismissed.

That the said judgment is final in allowing plaintiff no alternative but to give up its case and titles in conformity with the decree.

In support of the writ of error plaintiff makes also the following assignment of errors:

That complainant as the owner by patents from the State of Louisiana of swamp and overflowed lands subject to tidal overflow has been denied the protection of law for the said patents in consequence of the overflowed condition of the said lands subject to tidal overflow and to drainage and reclamation under the Acts of Congress and will be deprived of its property without due process of law, in violation of Article V and Article XIV, Sec. 1, Paragraph 1, Art. 1 Sec. 10 etc. of the Amendments of the Constitution of the United States, on a demurrer to the said patents as giving complainant or showing no right of action or cause of action against the defendants in this case, the Oyster Commission of Louisiana and certain defendants, Dunbar Lopez and Dukate Company and E. C. Joullian Canning Company.

Now complainant shows the only question that could be raised on the said demurrer and the motion in connection therewith to dissolve the injunction which the plaintiff complainant had obtained in the said case was the exclusive right to take oysters in the said territory embraced by the said patents which complainant claimed as owner of the lands embraced in the said patents and which was denied by the defendants, the Oyster Commission and other defendants and was set up in themselves as a State Board of commis-
103 sion and the said other defendants as licensees of the said oyster Commission taking supplies of oysters for their canneries, etc.

That the said sole question on the said demurrer is avoided by the decree of the Court which without passing upon the question of the exclusive right to the oysters in the said territory holds the said patents as nullities or as putting petitioner complainant out of Court on their face on said demurrer and motion to dismiss the injunction except as to inconsiderable or insignificant spaces which complainant is allowed to elect to claim or delineate by amending its petition within a delay to be fixed by the lower court to which the said case is remanded to give an opportunity for the exercise of this alternative or election rather than have its said petition and suit dismissed.

That the Court recognizes the incompetency avowed by the defendants to stand in judgment in an attack upon the said patents or titles of complainant and undertakes to annul the said patents and titles of complainant without a trial upon the merits of the case and without a determination of the exclusive right or claim to the oysters within the territory in dispute and covered by complainants' titles and without any lawful issue or attack upon the titles of plaintiff in this case.

That the said ruling is made on assumed grounds of navigability of waters in the territory in dispute which is in no way in issue and in any case would be a question of fact for the merits in a proper action. That the property is not sea shore as improperly considered by the judgment.

That the right to take oysters is a legitimate pursuit and a right of property of complainant as owners of the said lands within the area of their said titles and patents which cover one continuous

piece or parcel of land of the de-cription aforesaid and the same is done without any reference to or interference with navigability of any waters within the space in question and the same is a right of property in the exclusive space in question and could not be taken away from complainant without taking away all other rights to the land and property in question and the destruction and annulment of complainant's said right destroys and annuls all other
104 rights of private property and title in the land and territory in dispute and as the opinion shows annuls complainant's lawful possession and titles.

That the Court could not on general demurrer or on general principles or on a fictitious issue proceed to annul the plaintiff's titles of its own motion or without trial of the merits of the case.

That the action of the State Supreme Court deprives complainant of the rights of a citizen of the United States and the State of Louisiana to pursue a peaceful pursuit and own property and enjoy personal liberty free from unwarrantable seizure and arrest and takes petitioner's property without due process of law and divests vested rights and impairs the validity of a contract in respect to its titles to the said lands, in violation of Article XIV Section 1, paragraph 1 of the Amendments of the Constitution of the United States, Article 1 Section 10 paragraph 1 of the Constitution of United States, and Article V of Amendments of Constitution of United States.

That complainant is subjected to the great indignity of being ordered to amend the patents obtained by him from the State of Louisiana without any trial upon the merits of the said patents and at the instance of a defendant who is without interest and sued as a trespasser.

That this is a humiliation to which as a citizen of the United States or a corporation representing the interests of citizens the complainant should not be subjected and which deprives complainant of constitutional rights as citizen to own property and enjoy personal liberty and protection of person and property to which it should not be subjected.

That the effect of the said decision in this case is to expose petitioner, its agents and employees citizens of the United States, to alleged violation of pretended criminal laws executed by an irresponsible Commission which has no interest in petitioner's property and which is a law unto itself preventing complainant from access to and enjoyment of its property under threats of arrest and prosecution under the said alleged criminal process set up by it in the motion to dismiss the injunction in this case.

That all of the said acts of the said parties defendant and
105 the action of the Court in compelling complainant to elect to give up its property or define the navigable waters if any within the area of its patents or forfeit its said titles in having its suit dismissed are contrary to the provisions of the Constitution of the United States and particularly of Article 1 Section 10 of the United States Constitution and Articles 5 and 14 of the Amendments of the United States Constitution and deprives petitioner of

its rights as a citizen and of its personal liberty and safety and that of its officers, employees, etc. without trial or due process of law and impairs the obligation of complainant's said titles or contracts from the State and divests vested rights in violation of the said Articles as set out in the original petition and complaint herein and takes away and forfeits complainant's said title without trial by jury or due process of law and condemns petitioner to lose its property for asserting ordinary rights of ownership to the said property.

That the action of the Court herein as exhibited by it in the views expressed in the opinion in invading the sacred rights of property of complainant under its said patents or titles without any issue of fact in the case on a pretended assumption that the said patents embrace lands containing navigable waters is an arbitrary and tyrannical exercise of power extra judicial and beyond the functions of the Court as one of the co-ordinate branches of the government in the exercise of its constitutional power and imposes a condition to which in all good faith complainant could not be legally subjected as a holder of patents from the State of Louisiana under the acts of Congress in relation to swamp and overflowed lands emanating from the United States as a donation to the State for reclamation and drainage purposes and from the State to petitioner for all purposes for which private property whether consisting of submerged or overflowed lands or other lands reclaimable can be used. As said by the United States Supreme Court in Lowndes vs. Huntington, 153 U. S. 30, 31:

"It is clearly exclusive in its scope. Such is the plain import of its terms. Even if the language were less clear, reliance might be had on the rule of construction in respect to such grants.
106 When the sovereign grants land under water, which can not in its natural state be subjected to any of the uses to which dry land may be devoted, then a different rule of construction must be applied to the grant, so as to make it effectual for some purpose.

* * * * * * *

The purpose may be plainly expressed in the grant; if it be not, then the intent of the parties must be ascertained from the nature and situation of the land granted and all the circumstances surrounding the grant which may properly be considered for the purpose of ascertaining such intent."

That the said decision therefore is final in directing and condemning complainant to undertake and perform an impossible condition at the peril of the sacrifice of all its property and its whole investment made in connection with the use of the said property and the running of its steam boat "Carrie" in lawful commerce and the extensive expenses incident to the same and the business in which petitioner is engaged.

That the said opinion and decree subjects complainant to illegal hardship and operates as force and duress to enforce obiter expressions or views of the Court which are not material to a legal and judicial determination of the case but which subjects complainant

to irreparable injury and to irretrievable loss and destruction of its property under duress and force and compels a resort to a writ of error, unless we comply with a direction to waive or surrender the rights which we claim an exclusive right to the taking and cultivation and production of oysters within the territory embraced by our patents which is a condition following the law and grant and inseparable from the property and the only question or claim or point in issue in the case upon the demurrer or motion to dismiss the injunction and not a question of navigability vel non which it is attempted to substitute and enforce and which the Court assumes to pass upon in justifying an order to amend which would be destructive of complainant's case prejudging the said case without an opportunity to plaintiff to enforce its said titles by process of law and try its case upon the merits of the case. That the said
107 patents or titles are finally disposed of by said judgment appears too from the dissenting opinion of Mr. Justice Provosty.

That the said Supreme Court is in error in exercising the said power which is oppressive upon complainant and could not be exercised at the instance of the defendants herein with all due respect to the Court when looked at from the position of plaintiff.

That complainant cannot in advance of a trial of the case be forced to the said election or within the opportunity afforded to file an amended petition any more than complainant can be subjected to prosecution under threatened criminal process for defending its property against the defendants in this case and the exercise of compulsion to deprive petitioner of its property in either case would be an arbitrary abuse of power irrespective of the individual opinions of the parties of the law of the case.

That these consequences are both conclusions which if enforced prejudge the plaintiff's case and deny it a trial on the merits and equal protection of the laws and benefit of due process of law.

That reference in the opinion to the case of Burns vs. Crescent Gun & Rod Club, 116 La., 1038 is previously concluded by the expressions in the opinion and decree in accordance with which the said judgment is rendered and takes the case out of a condition to be amended in accordance with the said decision or to be tried upon the merits of the plaintiff's titles and is another evidence of the prejudging of the plaintiff's case before and without a trial upon the merits of the plaintiff's titles and patents.

That plaintiff is at liberty to leave open the water spaces or streams navigable or unnavigable of the description of the streams or bayous or outlets referred to in the said case of Burns vs. Crescent Gun & Rod Club, 116 La., 1038 for passage, communication and general fishing of floating fish other than oysters and the passage in and out of such fish or public use of any kind requiring the same and the conditions of the said Burns vs. Crescent Gun & Rod Club case in no way apply to this case as there was and is no interference with the said conditions but the said case of Burns vs. Crescent Gun & Rod Club

was a case of obstruction or closing of alleged navigable
108 streams and was a trial upon the merits of the patents or titles which were sustained for all the purposes of our case although in no way parallel to this suit as there were no oysters on the ground in controversy or question in this case of navigation or general rights of fishery.

That as owner of the ground in controversy it is competent to plaintiff to preserve any possible highways and waive all questions of navigation or use of the waters for means of communication whether intra or interstate and for fish through the body of petitioner's land and yet hold on to the property in or keep all oysters and the exclusive right to all oysters within the said land as an incident to the ownership of the soil in the said land and its subjection to the easement in the public for all lawful purposes. That this is the only election which could be presented to petitioner on proper pleadings but not on a demurrer and not the election to sacrifice petitioner's interests by filing a petition mis-named a petition to amend its petition to suit the views of the defendants or the arbitrary rulings of the Court upon petitioner's titles which are not at issue in a possessory action and without a trial upon the facts and law of the case or due process of law.

That the said judgment of the Supreme Court of Louisiana, the highest Court in the State, is a final judgment which cuts off petitioner from its rights under the said patents and titles and precludes petitioner from proceeding further in the case and is a sacrifice of petitioner's material interests contrary to the provisions of the Constitution of the United States and the Acts of Congress and patents and Acts of the legislature of the State of Louisiana recognizing petitioner's patents and exclusive rights to oysters within the waters making through the land whether the said waters be navigable or innavigable.

That Section 2 of Act No. 106 of 1886 of General Assembly of Louisiana provides:

"That if any river, bay, lake, bayou, cove, inlet, or pass makes into or runs through the land of any person, and is comprised within the limits of his lawful survey, such person or other lawful occupant
shall have exclusive right to use said body or bodies of water
109 for planting oysters and other shell fish * * *"

That the present "Oyster Law" under which the defendant Commission is organized, Act No. 178 of 1906 of State of Louisiana, Section 10, prohibits the said Commission from attempting the acts complained of, viz:

"* * * and no lease of any bottom which may be so claimed by a private individual, firm or corporation shall be valid or have any effect, until there shall have been an adjudication by a Court of competent jurisdiction between the State and claimant as to the validity of the title of the property to be leased * * *"

That the decisions of the Supreme Court of Louisiana have become res adjudicata on the subject of patents to land of the description of petitioner's Morgan vs. Nagodich, 40 A., 246, and have enforced the said provisions of prohibition against the said Oyster Commission

even in regard to acts of the character which had arisen or suits which had been brought previous to the enactment of the said prohibition (*Chauvin* vs. Oyster Commission, 121 La., p. 10.)

Now complainant shows that the whole of the area of land and sections and sub-divisions of the said patents are a grant of exclusive private rights to land whether above water or submerged, subject alone to the rights of navigation where navigation can be exercised. The waters on these lands are not in any sense navigable, but are subject to the superior right of navigation if any navigation can be exercised.

Complainant with all due respect prays that the action of the said Supreme Court of Louisiana in reference to the hearing of the subject of alleged navigable waters, in no way relevant to the demurrer or exception of no cause of action, in this case may be reviewed and corrected on writ of error in this Honorable Court in a way to maintain and vindicate the full rights and titles of complainant in the premises and restore it to the enjoyment of its property and civil rights and the full protection of the laws and Constitution of the United States and State of Louisiana and as prayed for in plaintiff's original and supplemental petition and petition for writ of error herein, and petitioner will ever pray.

110 (Signed) LOUISIANA NAVIGATION COMPANY, LIMITED,
(Signed) By WILLIAM V. GILMORE, *President.*
(Signed) J. C. GILMORE,
(Signed) THOMAS GILMORE.
(Signed) EDWARD N. PUGH,
Attorneys for Plaintiff.

(Endorsed:) No. 17594. Supreme Court of Louisiana. Louisiana Navigation Company, Limited, vs. Oyster Commission of Louisiana, E. C. Joullian Canning Company and Dunbars, Lopez & Dukate Company. Assignment of Errors. Edward N. Pugh, J. C. Gilmore, Thomas Gilmore, Attorneys for Plaintiff. Filed March 24, 1910. Paul E. Mortimer, Clerk.

111 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the Honorable the Judges of the Supreme Court of Louisiana, Sitting at New Orleans, Louisiana, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Supreme Court of Louisiana before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between the Louisiana Navigation Company, Limited, Plaintiff, vs. Oyster Commission of Louisiana, E. C. Joullian Canning Company and Dunbars, Lopez and Dukate Company, Defendants, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity

of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of *the*
clause of the Constitution, or of a treaty, or statute of, or com-
112 mission held under the United States, and the decision was
against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission; a manifest error hath happened to the great damage of the said Louisiana Navigation Company, Limited, Plaintiff, as by its complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, within 30 days from the date hereof, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the honorable Melville W. Fuller, Chief Justice of the said Supreme Court, the 24 day of March, in the year of our Lord one thousand nine hundred and ten.

[Seal U. S. Circuit Court for the 5th Circuit & Eastern District of La.]

H. J. CARTER,
Clerk of the Circuit Court of the United States
for the Eastern District of Louisiana.

Allowed by
JOS. A. BREAUX,
Chief Justice of the Supreme Court
of the State of Louisiana.

[Endorsed:] No. 17594. Louisiana Navigation Company, Limited, vs. Oyster Commission of Louisiana, E. C. Joullian Canning Company and Dunbars, Lopez & Dukate Company. Writ of Error. Filed Mar. 24, 1910. Paul E. Mortimer, Clerk.

113 *Copy of Writ of Error.*

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the Honorable the Judges of the Supreme Court of Louisiana Sitting at New Orleans, Louisiana, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Supreme Court of Louisiana before you, or some of you, being the highest court of

law or equity of the said State in which a decision could be had in the said suit between the Louisiana Navigation Company, Limited, Plaintiff vs. Oyster Commission of Louisiana, E. C. Joullian Canning Company and Dunbars, Lopez and Dukate Company, Defendants, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of the clause of the Constitution, or of a treaty, or statute of, or commission held under the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, of commission; a manifest error hath happened to the great damage of the said Louisiana Navigation Company, Limited, Plaintiff, as by its complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United
114 States, together with this writ, so that you have the same at Washington, within 30 days from the date hereof, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the said Supreme Court, the 24th day of March, in the year of our Lord one thousand nine hundred and ten.

(Signed) H. J. CARTER.
[SEAL.] *Clerk of the Circuit Court of the United States for the Eastern District of Louisiana.*

Allowed by
(Signed) JOS. A. BREAUX,
Chief Justice of the Supreme Court of the State of Louisiana.

(Endorsed:) No. 17,594—(Writ of Error) Louisiana Navigation Company Limited versus Oyster Commission of Louisiana, E. C. Joullian Canning Company and Dunbars, Lopez & Dukate Company—Copy of a Writ of Error Lodged in the Clerk's Office of the Supreme Court of Louisiana, is pursuance of the statute in such cases made and provided, this 24th day of March, one thousand nine hundred and ten—J. C. Gilmore, Thomas Gilmore, Edward N. Pugh, Attorneys of Plaintiff in Error—Filed Mar. 24, 1910, (Signed) Paul E. Mortimer, Clerk.

115 *Bond.*

Know all men by these presents, That we Louisiana Navigation Company, Limited, as principal, and J. C. Gilmore as sureties, are held and firmly bound unto the Oyster Commission of Louisiana and E. C. Joullian Canning Company and Dunbars, Lopez & Dukate Company, defendants in the full and just sum of one thousand dollars ($1000.) to be paid to the said Oyster Commission of Louisiana and E. C. Joullian Canning Company and Dunbars, Lopez & Dukate Company, defendants, their certain attorneys, executors, administrators, or assigns, to which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents. Sealed with our seals and dated this twenty-fourth day of March, in the year of our Lord one thousand nine hundred and ten.

Whereas, lately at a session of the Supreme Court of Louisiana, holding sessions in the City of New Orleans, State of Louisiana, in a suit depending in said Court, between the Louisiana Navigation Company Limited, Plaintiff, vs. Oyster Commission of Louisiana E. C. Joullian Canning Company and Dunbars, Lopez & Dukate Company, Defendants, a final judgment was rendered against the said Louisiana Navigation Company, Limited, Plaintiff, and the said Louisiana Navigation Company, Limited having obtained a writ of error and filed a copy thereof in the Clerk's Office of the said Court to reverse the judgment in the aforesaid suit, and a citation directed to the said Oyster Commission of Louisiana and E. C. Joullian Canning Company and Dunbars, Lopez and Dukate Company, Defendants, citing and admonishing said parties defendant to be and appear before the Supreme Court of the United States to be holden at the City of Washington, District of Columbia, within 30 days from the date thereof.

Now, the Condition of the above obligation is such, That if the said Louisiana Navigation Company, Limited shall prosecute the said writ of error to effect, and answer all damages and costs if it fail to make its plea good, then the above obligation to be
116 void; else to remain in full force and virtue.

(Signed) LOUISIANA NAVIGATION COMPANY, LIMITED,
By WILLIAM V. GILMORE, *President.*
[SEAL.]

(Signed) J. C. GILMORE. [SEAL.]

Sealed and delivered in presence of:
(Signed) THOMAS GILMORE.
(Signed) JOHN A. KLOTZ.

Approved by:
(Signed) JOS. A. BREAUX,
Chief Justice of the Supreme Court of the State of Louisiana.

(Endorsed:) Supreme Court—No. 17,594—Louisiana Navigation ompany Limited vs. (Bond) Oyster Commission of Louisiana, . C. Joullian Canning Company and Dunbars, Lopez and Dukate ompany—Filed March 24, 1910—(Signed) Paul E. Mortimer, lerk.

17 THE UNITED STATES OF AMERICA:

Supreme Court of the State of Louisiana.

he President of the United States to E. C. Joullian Canning Company, through its President or other proper officer, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at the City of Washington, within thirty days from the date hereof pursuant to a writ f error filed in the Clerk's Office of the Supreme Court of the State f Louisiana at New Orleans, wherein the Louisiana Navigation ompany, Limited, is Plaintiff in Error, and the Oyster Commission f Louisiana, E. C. Joullian Canning Company; and Dunbars, Lopez nd Dukate Company are Defendants in Error, to show cause, if any here be, why the judgment rendered against the said Louisiana Navigation Company, Limited, Plaintiff in Error, as in said writ f error mentioned, should not be corrected, and why speedy justice hould not be done to the parties in that behalf.

Witness, the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 26 day of March, in the ear of our Lord one thousand nine hundred and ten.

[Seal Supreme Court of the State of Louisiana.]

JOSEPH A. BREAUX,
Chief Justice of the Supreme Court of the State of Louisiana.

[Endorsed:] Supreme Court of the State of Louisiana. No. 17,594. Louisiana Navigation Company, Limited, vs. Oyster Commission of Louisiana, E. C. Joullian Canning Company, and Dunbars, Lopez and Dukate Company. Citation.

Sheriff's Return.

Received Tuesday, Mar. 29, 1910, and on the 4th day of April, 1910, I served a copy of the within citation on the E. C. Jullian Canning Company, by personal service on J. A. Renshaw, its Secretary, the President and other superior officers being absent from the Parish at the time of said service. All these facts I ascertained by interrogating J. A. Renshaw, Secretary. Returned the same day.

E. E. CHAILLOT,
Deputy Civil Sheriff,
Parish of Orleans, State of Louisiana.

Ernest Edward Chaillot, Deputy Civil Sheriff, Parish of Orleans, State of Louisiana, being sworn deposes and says that he made a personal service of a copy of the within citation on J. A. Renshaw, Secretary of the E. C. Jullian Canning Company as stated in the above return.

E. E. CHAILLOT.

Sworn to & subscribed before me, at the City of N. O. this the 7th day of April, A. D. 1910.

[Seal Supreme Court of the State of Louisiana.]

PAUL E. MORTIMER,
Clk. Sup. Ct.

Supreme Court of Louisiana. Filed Apr. 7, 1910. Paul E. Mortimer, Clerk.

118 THE UNITED STATES OF AMERICA:

Supreme Court of the State of Louisiana.

The President of the United States to Dunbars, Lopez and Dukate Company, through its President or other proper officer, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at the City of Washington, within thirty days from the date hereof pursuant to a writ of error filed in the Clerk's Office of the Supreme Court of the State of Louisiana at New Orleans, wherein the Louisiana Navigation Company, Limited, is Plaintiff in Error, and the Oyster Commission of Louisiana; E. C. Joullian Canning Company; and Dunbars, Lopez and Dukate Company, are Defendants in Error, to show cause, if any there be, why the judgment rendered against the said Louisiana Navigation Company, Limited, Plaintiff in Error, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 26 day of March in the year of our Lord one thousand nine hundred and ten.

[Seal Supreme Court of the State of Louisiana.]

JOSEPH A. BREAUX,
Chief Justice of the Supreme Court of the State of Louisiana.

[Endorsed:] Supreme Court of the State of Louisiana. No. 17,594. R. Louisiana Navigation Company, Limited, vs. Oyster Commission of Louisiana; E. C. Joullian Canning Company; and Dunbars, Lopez and Dukate Company. Citation.

Sheriff's Return.

Received Tuesday, Mar. 29, 1910, and on the 31st day of March, 1910, I served a copy of the within citation on the Dunbar, Lopez, Dukate Company defendant herein and by personal service on George Dunbar, its President in the City of New Orleans, Parish of Orleans, State of Louisiana.

Returned the same day.

ERNEST A. LUCAS,
Deputy Civil Sheriff,
Parish of Orleans, State of Louisiana.

Ernest Anthony Lucas, Deputy Civil Sheriff, Parish of Orleans, State of Louisiana, being sworn, deposes and says that he made a personal service of a copy of the within citation on George Dunbar, President of the Dunbar, Lopez and Dukate Company as stated in the above return.

ERNEST A. LUCAS.

Sworn to & subscribed before me, at the City of New Orleans, this the 7th day of April, A. D. 1910.

[Seal Supreme Court of the State of Louisiana.]

PAUL E. MORTIMER,
Clk. Sup. Ct.

Supreme Court of Louisiana. Filed Apr. 7, 1910. Paul E. Mortimer, Clerk.

119 THE UNITED STATES OF AMERICA:

Supreme Court of the State of Louisiana.

The President of the United States to Oyster Commission of Louisiana, through its President or other proper officer, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at the City of Washington, within thirty days from the date hereof pursuant to a writ of error filed in the Clerk's Office of the Supreme Court of the State of Louisiana at New Orleans, wherein the Louisiana Navigation Company, Limited, is Plaintiff in Error and the Oyster Commission of Louisiana; E. C. Joullian Canning Company; and Dunbars, Lopez and Dukate Company are Defendants in Error, to show cause, if any there be, why the judgment rendered against the said Louisiana Navigation Company, Limited, Plaintiff in Error, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Melville W. Fuller, Chief Justice of the

Supreme Court of the United States, this 26 day of March, in the year of our Lord one thousand nine hundred and ten.

[Seal Supreme Court of the State of Louisiana.]

JOSEPH A. BREAUX,
Chief Justice of the Supreme Court of the State of Louisiana.

[Endorsed:] Supreme Court of the State of Louisiana. R. No. 17,594. Louisiana Navigation Company, Limited, vs. Oyster Commission of Louisiana; E. C. Joullian Canning Company; and Dunbars, Lopez and Dukate Company. Citation.

Sheriff's Return.

Received Tuesday, Mar. 29, 1910, and on the 31st day of March, 1910, I served a copy of the within citation on the Oyster Commission of *of* Louisiana defendant herein and by personal service on L. J. Dassmann, its President, in the City of New Orleans, Parish of Orleans, State of Louisiana.

Returned the same day.

ERNEST A. LUCAS,
Deputy Civil Sheriff,
Parish of Orleans, State of Louisiana.

Ernest Anthony Lucas, Deputy Civil Sheriff, Parish of Orleans, State of Louisiana, being sworn deposes and says that he made a personal service of copy of the within citation on L. J. Dassmann, President of the Oyster Commission of Louisiana as stated in the above return.

ERNEST A. LUCAS.

Sworn to and subscribed before me at the city of New Orleans, this 7th day of April, 1910.

[Seal Supreme Court of the State of Louisiana.]

PAUL E. MORTIMER,
Clk. Sup. Ct.

Supreme Court of Louisiana. Filed Apr. 7, 1910. Paul E. Mortimer, Clerk.

120 STATE OF LOUISIANA:

Patent No. 194.

To all to whom these presents shall come, Greeting:

Whereas, Richard Pindell of the Parish of Orleans in the State of Louisiana purchased per warrant No. 149 dated 20th March, 1867, the following described Swamp Lands Subject to tidal overflow to

wit: The fractional Sections 23, 24, 25 & 26 in Township No. Ten South of Range Twenty East in the South Eastern Land District of Louisiana in the parish of St. Bernard containing Four Hundred & Sixty eight 48/100 acres, according to the official plat of the Survey of said lands in the State Land Office. 468 48/100.

Now know ye, That the State of Louisiana, in consideration of the premises and in conformity with law, in such case made and provided, has Given, Granted and Sold, and by these presents Does Give, Grant and Sell, unto the said Richard Pindell of Orleans and to his heirs, the above described land: to Have and to Hold the same, together with all the rights, titles and privileges thereunto belonging, unto the said Richard Pindell his heirs and Assigns forever.

In Testimony Whereof, I, J. Madison Wells, Governor of the State of Louisiana, have caused these Letters to be made Patent, and the Seal of the State Land Office to be hereunto affixed.

Given under my hand, At the City of New Orleans, of the 20th day of March, in the year of our Lord, One Thousand Eight Hundred and Sixty Seven and of the Independence of the United States, the Ninety First.

J. MADISON WELLS.

By the Governor:

[Seal Land Office of the State of Louisiana.]

AD DUPRÉ, *Register.*

Record of Patents, Vol. Fifteen, Page 94.

121 STATE OF LOUISIANA:

Patent No. 195.

To all to whom these presents shall come, Greeting:

Whereas, Richard Pindell of the Parish of Orleans in the State of Louisiana purchased per warrant No. 141 dated 20th March, 1867, the following described Swamp Lands subject to tidal overflow to wit: The fractional Sections Thirty Three (33) & Thirty Four (34) in Township No. 10 South of Range Twenty (20) East in the South Eastern Land District of Louisiana in the parish of St. Bernard containing Five Hundred & Sixty Nine 72/100 acres 569 72/100, according to the official plat of the Survey of said lands in the State Land Office. 569 72/100.

Now know Ye, That the State of Louisiana, in consideration of the premises and in conformity with law, in such case made and provided, has Given, Granted and Sold, and by these presents Does Give, Grant and Sell, unto the said Richard Pindell of Orleans and to his heirs, the above described land: to Have and to Hold the same, together with all the rights, titles and privileges thereunto belonging, unto the said Richard Pindell his heirs and Assigns forever.

In Testimony Whereof, I, J. Madison Wells, Governor of the State of Louisiana, have caused these Letters to be made Patent, and the Seal of the State Land Office to be hereunto affixed.

Given under my hand, At the City of New Orleans, of the 20th day of March, in the year of our Lord, One Thousand Eight Hundred and Sixty Seven and the Independence of the United States, the Ninety first.

J. MADISON WELLS.

By the Governor:

[Seal Land Office of the State of Louisiana.]

AD DUPRÉ, *Register.*

Record of Patents, Vol. Fifteen, Page 94.

122 STATE OF LOUISIANA:

Patent No. 196.

To all to whom these presents shall come, Greeting:

Whereas, Richard Pindell of the Parish of Orleans in the State of Louisiana purchased per warrant No. 142 dated 20th March, 1867, the following described Swamp Lands Subject to tidal overflow to wit: The fractional Sections No. 27, 28, & 32 in Township 10 South of Range 20 East in the South Eastern Land District of Louisiana in the parish of St. Bernard containing Three hundred & eighty 40/100 acres, 380 40/100, according to the official plat of the Survey of said lands in the State Land Office. 380 40/100.

Now know Ye, That the State of Louisiana, in consideration of the premises and in conformity with law, in such case made and provided, has Given, Granted and Sold, and by these presents Does Give, Grant and Sell, unto the said Richard Pindell of Orleans and to his heirs, the above described land: to Have and to Hold, the same, together with all the rights, titles and privileges thereunto belonging, unto the said Richard Pindell his heirs and Assigns forever.

In Testimony whereof, I, J. Madison Wells Governor of the State of Louisiana, have caused these Letters to be made Patent, and the Seal of the State Land Office to be hereunto affixed.

Given under my hand, At the City of New Orleans, of the 20th day of March in the year of our Lord, One Thousand Eight Hundred and Sixty Seven and of the Independence of the United States, the Ninety First.

J. MADISON WELLS.

By the Governor:

[Seal Land Office of the State of Louisiana.]

AD DUPRÉ, *Register.*

Record of Patents, Vol. Fifteen, Page 95.

123 STATE OF LOUISIANA:

Patent No. 4955.

To all to whom these presents shall come, Greeting:

Whereas, Henry J. Leovy of the Parish of Orleans in the State of Louisiana, purchased per Certificate No. 4287 N. S. D., January 26, 1883, Three Islands in Sections Twenty, Twenty one, Twenty eight and Twenty nine (Sea Marsh or Prairie), of Section No. 20, 21, 28, & 29, in Township No. Ten South of Range No. Twenty East in the South Eastern, East of River Land District, containing Fifty one (51.00) acres, according to the official plat of the survey of said lands in the State Land Office.

Now, Know Ye, That the State of Louisiana, in consideration of the premises and in conformity with law, in such case made and provided, Has Given, Granted and Sold and by these presents Does Give, Grant and Sell unto the said Henry J. Leovy and to his heirs the above described land to have and to hold the same together with all the Rights, Titles and Privileges thereunto belonging, unto the said Henry J. Leovy and to his heirs and assigns forever.

In Testimony Whereof, I, Samuel Douglas McEnery, Governor of the State of Louisiana, have caused these Letters to be made Patent and the Seal of the State Land Office to be hereunto affixed.

Given under my hand, at the City of Baton Rouge, on the twenty sixth day of January, in the year of our Lord, One Thousand Eight Hundred and Eighty three and of the Independence of the United States, the One Hundred and seventh.

S. D. McENERY.

By the Governor:

[Seal Land Office of the State of Louisiana.]

I. G. RICHARDSON,
Register of State Land Office.

Record of Patent, Vol. 22, page 75.

124 THE STATE OF LOUISIANA:

Patent No. 706.

N. S. L.

To all to whom these presents shall come, Greeting:

Whereas, J. C. Gilmore of the Parish of Orleans in the State of Louisiana, purchased per Certificate No. 571 N. S. L., March 15th, 1887, The Fractional West half of Fractional West half Section 4 and Fractional North East quarter of Section No. Five (5) in Township No. Eleven (11) South Range No. Twenty (20) East in the South Eastern, East of Miss. River Land District, containing

Two hundred and Seventy six 00/100 acres according to the official plat of the survey of said lands in the State Land Office.

Now Know Ye, That the State of Louisiana, in consideration of the premises and in conformity with law in such case made and provided, has given, granted and sold, and by these presents does give grant and sell unto the said J. C. Gilmore and to his heirs the above described land, to have and to hold the same together with all the rights, titles and privileges thereunto belonging unto the said J. C. Gilmore and to his heirs and assigns forever.

In Testimony Whereof, I, Samuel Douglas McEnery, Governor of the State of Louisiana, have caused these letters to be made Patent and the Seal of the State Land Office to be hereunto affixed.

Given under my Hand at the City of Baton Rouge, on the fifteenth (15th) day of March in the year of our Lord, One Thousand Eight Hundred and Eighty seven and of the Independence of the United States the one hundred and Eleventh.

S. D. McENERY.

By the Governor:

[Seal Land Office of the State of Louisiana.]

JAMES L. LOBDELL,
Register of State Land Office.

Record of Patent, Vol. 23, page 225.

[Endorsed.]

[Stamped:] Joseph C. Gilmore, att'y & counsellor, 10 Carondelet Street, New Orleans.

I hereby transfer assign and convey to the Louisiana Navigation Company, Limited, all my right title and interest — and to the within patent and the land therein conveyed New Orleans December Fourth Eighteen hundred and ninety four.

J. C. GILMORE.

Above transfer accepted for and on behalf for the Louisiana Navigation Company, Limited.

W. V. GILMORE, *President.*

STATE OF LOUISIANA,
Parish of St. Bernard:

CLERK'S OFFICE, *October 18th,* 1888.

I do hereby certify that the within Patent was this day duly recorded in my Office in book of Conveyances No. 17 folio 195.

[Seal of the Clerk of the Parish of St. Bernard, State of Louisiana.]

J. R. DUCROS,
Clerk ex. Off. Recorder.

[Stamped:] Joseph C. Gilmore, att'y & counsellor, 10 Carondelet Street, New Orleans.

125 THE STATE OF LOUISIANA:

Patent No. 1038.

N. S. L.

To all to whom these presents shall come, Greeting:

Whereas, J. C. Gilmore of the Parish of Orleans in the State of Louisiana, located per Certificate No. 769 N. S. L., Sec. 11, Act 75 of 1880, November 7, 1887, The Fractional Sections Five (5) Six (6) Seven (7) Eight (8) South West quarter of Section Eighteen (18) North East quarter of North West quarter of Section Nineteen (19) and West half of Section No. Thirty one (31) in Township No. Eleven (11) South Range No. Twenty (20) East in the South Eastern East of River Land District, containing Nine hundred and ninety and 00/100 acres, according to the official plat of the survey of said lands in the State Land Office.

Now, Know Ye, That the State of Louisiana, in consideration of the premises and in conformity with law in such case made and provided, has given, granted and sold, and by these presents does give, grant and sell unto the said J. C. Gilmore and to his heirs the above described land, to have and to hold the same together with all the rights, titles and privileges thereunto belonging unto the said J. C. Gilmore and to his heirs and assigns forever.

In Testimony Whereof, I, Samuel Douglas M'Enery, Governor of the State of Louisiana, have caused these letters to be made Patent and the Seal of the State Land Office to be hereunto affixed.

Given under my hand at the City of Baton Rouge, on the 7 day of November, in the year of our Lord, one thousand eight hundred and eighty Seven and of the Independence of the United States the one hundred and Twelfth.

S. D. McENERY.

By the Governor:

[Seal Land Office of the State of Louisiana.]

JAMES L. LOBDELL,
Register of State Land Office.

Record of Patent, Vol. 24, page 78.

[Endorsed.]

[Stamped:] Joseph C. Gilmore, att'y & counsellor, 10 Carondelet Street, New Orleans.

I hereby transfer assign and convey to the Louisiana Navigation Company, Limited, all my right title and interest — and to the within patent and to the land therein conveyed New Orleans, December Fourth Eighteen hundred and ninety four.

J. C. GILMORE,

Above transfer accepted for and on behalf for the Louisiana Navigation Company, Limited.

W. V. GILMORE, *President.*

STATE OF LOUISIANA,
Parish of St. Bernard:

CLERK'S OFFICE, *October* 18*th*, 1888.

I do hereby certify that the within Patent was this day duly recorded in my office in book of Conveyances No. 27, folio 197.

[Seal of the Clerk of the Parish of St. Bernard, State of Louisiana.]

CHS. M. GARDANNI,
Dy. Clerk, ex Officio Recorder.

[Stamped:] Joseph C. Gilmore, att'y & counsellor, 10 Carondelet Street, New Orleans.

126 THE STATE OF LOUISIANA:

[Stamped:] Joseph C. Gilmore, Att'y & Counsellor, 10 Carondelet Street, New Orleans.

Patent No. 1039. N. S. L.

To all to whom these presents shall come, Greeting:

Whereas, J. C. Gilmore, of the Parish of Orleans, in the State of Louisiana, located per Certificate No. 770 N. S. L., Sec. 11, Act 75 of 1880, November 7, 1887, All of fractional Section No. Thirteen (13) in Township No. Eleven (11) South Range No. Nineteen (19) East in the South Eastern East of River Land District, containing Three hundred and Twenty 00/100 acres, according to the official plat of the survey of said lands in the State Land Office.

Now, Know Ye, That the State of Louisiana, in consideration of the premises and in conformity with law in such case made and provided, has given, granted and sold, and by these presents does give, grant and sell unto the said J. C. Gilmore and to his heirs the above described land, to have and to hold the same together with all the rights, titles and privileges thereunto belonging unto the said J. C. Gilmore and to his heirs and assigns forever.

In Testimony Whereof, I, Samuel Douglas M'Enery, Governor of the State of Louisiana, have caused these letters to be made Patent and the Seal of the State Land Office to be hereunto affixed.

Given under my hand at the City of Baton Rouge, on the 7 day of November, in the year of our Lord, one thousand eight hundred and eighty seven and of the Independence of the United States the one hundred and twelfth.

By the Governor:

S. D. McENERY.

Record of Patent, Vol. 24, page 78.

]Seal Land Office, State of Louisiana.]

JAMES L. LOBDELL,
Register of State Land Office.

[Endorsement.]

[Stamped:] Joseph C. Gilmore, Att'y & Counsellor, 10 Carondelet Street, New Orleans.

I hereby transfer assign and convey to the Louisiana Navigation Company Limited all my right title and interest *and* to the within patent and the land therein conveyed.

New Orleans, December 4th, 1894.

December Fourth eighteen hundred & ninety four.

J. C. GILMORE.

Above transfer accepted for and on behalf for the Louisiana Navigation Company Limited.

W. V. GILMORE, *President.*

STATE OF LOUISIANA,
Parish of St. Bernard:

CLERK'S OFFICE, *October 18th,* 1888.

I do hereby certify that the within Patent was this day duly recorded in my office in book of Conveyances No. 17, folio 197.

CHS. M. GARDANNE,
Dy. Clerk, ex-Officio Recorder.

[The seal of the Clerk of the Parish of St. Bernard, State of Louisiana.]

[Stamped:] Joseph C. Gilmore, Att'y & Counsellor, 10 Carondelet Street, New Orleans.

127 THE STATE OF LOUISIANA:

Patent No. 5093.

To all to whom these presents shall come, Greeting:

Whereas, Joseph C. Gilmore of the Parish of Orleans in the State of Louisiana, purchased per Certificate No. 2804—N. S. L.—Dated 27 April, 1894, The East fractional half of North West fractional quarter Tidal Overflow, of Section No. Four (4) in Township No. Eleven (11) South of Range No. Twenty (20) East in the South Eastern, East of River Land District, Parish of St. Bernard, containing Thirty Three & 00/100 acres according to the official plat of the survey of said lands in the State Land Office.

Now Know Ye, That the State of Louisiana, in the consideration of the premises and in conformity with law in such case made and provided, has given, granted and sold, and by these presents does give, grant and sell unto the said Joseph C. Gilmore and to his heirs, the above described land, to have and to hold the same together with all the rights, titles and privileges, thereunto belonging unto the said Joseph C. Gilmore and to his heirs and assigns forever.

In Testimony Whereof I, Murphy James Foster, Governor of the

State of Louisiana, have caused these letters to be made Patent, and the Seal of the State Land Office to be hereunto affixed.

Given under my hand, at the City of Baton Rogue, on the Twenty Seventh day of April in the year of our Lord One Thousand Eight Hundred and Ninety Four and of the Independence of the United States the one hundred and Eighteenth.

By the Governor:

MURPHY J. FOSTER.

Record of Patent, Vol. 28, Page 209.

[Seal Land Office, State of Louisiana.]

JOHN S. LANIER,
Register State Land Office.

[Endorsement.]

I hereby transfer assign and convey to the Louisiana Navigation Company Limited all my right, title and interest *and* to the within patent and the land therein conveyed.

New Orleans, December Fourth Eighteen hundred and ninety four.

J. C. GILMORE.

Above transfer accepted for and on behalf for the Louisiana Navigation Company Limited.

W. V. GILMORE, *President.*

Duly Registered at the Parish of St. Bernard on the 5th day of May A. D. 1894, in Book of Conveyances No. 18 folios 192 & seq. Clerk's office Parish of St. Bernard, May 5th, 1894.

[Seal of the Parish of St. Bernard, State of Louisiana.]

JAS. D. ST. ALEXANDRE,
Clerk, ex-Officio Recorder.

[Stamped:] Joseph C. Gilmore, Att'y & Counsellor, 10 Carondelet Street, New Orleans.

128 THE STATE OF LOUISIANA:

[Stamped:] Joseph C. Gilmore, Att'y & Counsellor, 10 Carondelet Street, New Orleans.

Patent No. 961. N. S. L.

To all to whom these presents shall come, Greeting:

Whereas, Samuel L. Gilmore, of the Parish of Orleans, in the State of Louisiana, located per Certificate No. 719 N. S. L., Sec. 11, Act. 75 of 1880, September 12, 1880, The South half and North West quarter of Section Five (5) East half of East half and South West quarter of South East quarter of Section Six (6) North East quarter,

North half of South East quarter of Section Seven (7) and North West quarter of Section No. Eight (8) in Township No. Twelve (12) South Range No. Twenty (20) East in the South Eastern East of River Land District, containing One thousand and eighty and 00/000 (1080 00/100) acres, according to the official plat of the survey of said lands in the State Land Office.

Now, Know Ye, That the State of Louisiana, in consideration of the premises and in conformity with law in such case made and provided has given, granted and sold, and by these presents does give, grant and sell unto the said Samuel L. Gilmore and to his heirs the above described land, to have and to hold the same together with all the rights, titles and privileges thereunto belonging unto the said Samuel L. Gilmore and to his heirs and assigns forever.

In Testimony Whereof, I Samuel Douglas M'Enery, Governor of the State of Louisiana, have caused these letters to be made Patent and the Seal of the State Land Office to be hereunto affixed.

Given under my hand at the City of Baton Rouge, on the 12 day of September, in the year of our Lord, one thousand eight hundred and eighty seven and of the Independence of the United States the one hundred and Twelfth.

By the Governor:

S. D. McENERY.

Record of Patent, Vol. 24, page 39.

[Seal Land Office, State of Louisiana.]

JAMES L. LOBDELL,
Register of State Land Office.

[Endorsement.]

[Stamped:] Joseph C. Gilmore, Att'y & Counsellor, 10 Carondelet Street, New Orleans.

I hereby sell, transfer, assign and convey to Joseph C. Gilmore all my right title and interest *and* to the within patent and the land therein conveyed for the price paid by him.

New Orleans, March 9th, '88.

SAM'L L. GILMORE.

I hereby transfer assign and convey to the Louisiana Navigation Company Limited all my right title and interest *and* to the within patent and the land therein conveyed.

New Orleans, December Fourth, Eighteen hundred and ninety four.

J. C. GILMORE.

Above transfer accepted for and on behalf for the Louisiana Navigation Co. Limited.

W. V. GILMORE, *President.*

[Stamped:] Joseph C. Gilmore, Att'y & Counsellor, 10 Carondelet Street, New Orleans.

STATE OF LOUISIANA,
Parish of St. Bernard:

CLERK'S OFFICE, *October 18th,* 1888.

I do hereby certify that the within Patent was this day duly recorded in my office in book of Conveyances No. 17, folio 196.

[The seal of the clerk of the Parish of St. Bernard, State of Louisiana.]

CHS. M. GARDANNE,
D'y Clerk, ex-Officio Recorder.

129 THE STATE OF LOUISIANA:

[Stamped:] Joseph C. Gilmore, Att'y & Counsellor, 10 Carondelet Street, New Orleans.

Patent No. 1040. N. S. L.

To all to whom these presents shall come, Greeting:

Whereas, J. C. Gilmore of the Parish of Orleans in the State of Louisiana, located per Centificate No. 771, N. S. L., Sec. 11, Act 75 of 1880, November 7, 1887, The West half of North East quarter and East half of North West quarter of Section No. Six (6) in Township No. Twelve (12) South Range No. Twenty (20) East in the South Eastern East of River Land District, containing One hundred and sixty 00/100 acres, according to the official plat of the survey of said lands in the State Land Office.

Now, Know Ye, That the State of Louisiana, in consideration of the premises and in conformity with law in such case made and provided, has given, granted and sold, and by these presents does give, grant and sell unto the said J. C. Gilmore and to his heirs the above-described land, to have and to hold the same together with all the rights, titles and privileges thereunto belonging unto the said J. C. Gilmore and to his heirs and assigns forever.

In Testimony Whereof, I, Samuel Douglas M'Enery, Governor of the State of Louisiana, have caused these letters to be made Patent and the Seal of the State Land Office to be hereto affixed.

Given under my hand at the City of Baton Rouge, on the 7 day of November, in the year of our Lord, one thousand eight hundred and eighty seven and of the Independence of the United States the one hundred and Twelfth.

By the Governor:

S. D. McENERY.

[Seal Land Office, State of Louisiana.]

Record of Patent, Vol. 24, page 79.

JAMES L. LOBDELL,
Register of State Land Office.

[Endorsement.]

[Stamped:] Joseph C. Gilmore, Att'y & Counsellor, 10 Carondelet Street, New Orleans.

I hereby transfer assign and convey to the Louisiana Navigation Company Limited all my right title and interest *and* to the within patent and the land therein conveyed.

New Orleans December the Fourth Eighteen hundred and ninety four.

J. C. GILMORE.

Above transfer accepted for and on behalf for the Louisiana Navigation Co. Limited.

W. V. GILMORE, *President.*

[Stamped:] Joseph C. Gilmore, Att'y & Counsellor, 10 Carondelet Street, New Orleans.

STATE OF LOUISIANA,
Parish of St. Bernard:

CLERK'S OFFICE, *October* 18*th*, 1888.

I do hereby certify that the within Patent was this day duly recorded in my office in book of Conveyances No. 17, folio 197.

[The seal of the clerk of the Parish of St. Bernard, State of Louisiana.]

CHS. M. GARDENNE,
D'y Clerk, ex-Officio Recorder.

130 THE STATE OF LOUISIANA:

[Stamped:] Joseph C. Gilmore, Att'y & Counsellor, 10 Carondelet Street, New Orleans.

Patent No. 761. N. S. L.

To all to whom these presents shall come, Greeting:

Whereas, W. V. Gilmore of the Parish of Orleans in the State of Louisiana, purchased per Certificate No. 601 N. S. L., April 11th, 1887, The All of Section 20, of Section No. Twenty (20) in Township No. Eleven (11) South Range No. Twenty (20) East in the South Eastern East of Miss. River Land District, containing Six hundred and forty and 00/100 acres according to the official plat of the survey of said lands in the State Land Office.

Now Know Ye, That the State of Louisiana, in consideration of the premises and in conformity with law and in such case made and provided, has given, granted and sold, and by these presents does give, grant and sell unto the said W. V. Gilmore and to his heirs the above described land, to have and to hold the same together with all the rights, titles and privileges thereunto belonging unto the said W. V. Gilmore and to his heirs and assigns forever.

In Testimony Whereof, I, Samuel Douglas McEnery, Governor of the State of Louisiana, have caused these letters to be made Patent and the Seal of the State Land Office to be hereunto affixed.

Given under my hand at the City of Baton Rouge, on the 11th day of April in the year of our Lord, One Thousand Eight Hundred and Eighty Seven and of the Independence of the United States the one hundred and Eleventh.

By the Governor:

S. D. McENERY.

Record of Patent, Vol. 23, page 252.

[Seal Land Office of the State of Louisiana.]

JAMES L. LOBDELL,
Register of State Land Office.

[Endorsed.]

[Stamped:] Joseph C. Gilmore, Att'y & Counsellor, 10 Carondelet Street, New Orleans.

I hereby transfer assign and convey to the Louisiana Navigation Company Limited all my right title and interest *and* to the within patent and the land therein conveyed.

New Orleans, December Fourth Eighteen hundred and ninety four.

J. C. GILMORE.

Above transfer accepted for and on behalf for the Louisiana Navigation Co. Limited.

W. V. GILMORE, *President.*

[Stamped:] Joseph C. Gilmore, Att'y & Counsellor, 10 Carondelet Street, New Orleans.

I hereby sell transfer assign and convey to Joseph C. Gilmore all my right title and interest *and* to the within patent and the land therein conveyed.

New Orleans, Sept. 1st, 1894.

W. V. GILMORE.

STATE OF LOUISIANA,
Parish of St. Bernard:

CLERK'S OFFICE, *October 15th*, 1888.

I do hereby certify that the within Patent No. 761 was this day recorded in my office in book of Conveyances No. 17, fo. 194.

[Seal of the Clerk of the Parish of St. Bernard, State of Louisiana.]

J. R. DUCROS,
Clerk, ex-Off. Recorder.

131 [Stamped:] Joseph C. Gilmore, Att'y & Counsellor, 10 Carondelet Street, New Orleans.